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# IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fourth periodic reports submitted by States parties
under articles 16 and 17 of the Covenant

Addendum

## GERMANY*

[10 January 2000]

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* The third periodic report concerning rights covered by articles 1 to 15 (E/1994/104/Add.14) was considered by the Committee on Economic, Social and Cultural Rights at its nineteenth session (see E/C.12/1998/SR.40-42) in 1998.

The information submitted by Germany in accordance with the guidelines concerning the initial part of reports of States parties is contained in the core document (HRI/CORE/1/Add.75).

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# I. GENERAL INFORMATION

## A. Preliminary remarks

1. The present report covers the period from the end of 1994 (partly mid-1995) until the end of 1998 (partly mid-1999).

2. The third report by the Federal Republic of Germany was submitted in 1996. As requested by the Committee on Economic, Social and Cultural Rights this report was supplemented in September 1998 by the German Government's replies to 38 questions raised by the Committee (document E/C.12/Q/GER.1).

3. On 23 and 24 November 1998 the report was considered by the Committee in the usual form of an in-depth dialogue with a delegation of the German Government. The Committee summarized the outcome of this consideration in its concluding observations of 4 December 1998 (E/C.12/1/Add. 29). In view of the short period of time between the submission of the third report (autumn 1996), its consideration in the Committee (autumn 1998) and the submission of this report (autumn 1999), the latter largely confines itself to informing about changes that have occurred since the submission of the third report and to comment on the concluding observations of the Committee.

## B. General issues in connection with the domestic implementation of the Covenant

### 1. Formal implementation of the Covenant, court decisions (paras. 13 and 25 of the concluding observations)

4. First of all, reference is made to the Federal Government's replies to questions 1 and 2 of document E/C.12/Q/GER. 1. The Federal Government took note of the concerns and suggestions expressed by the Committee in this context. However, it can only reiterate that it is totally unusual in German legislative practice to explicitly state in the legislative intent that the new domestic regulation affects obligations arising from multilateral international agreements ratified by Germany (apart from the Covenant, e.g. also Conventions of the International Labour Organization and the European Social Charter) and that it is compatible with these obligations.

5. If only because of the principle of separation of powers it is impossible for the Federal Government to urge the courts to consider in the grounds for a decision whether the legislation applied is compatible with the obligations of the Covenant. In their rulings courts usually mention international agreements only either if they close a gap in domestic legislation, if they can be used for the interpretation of a domestic provision or if a party to the proceedings explicitly claims that international law was violated.

### 2. Consultation with non-governmental organizations in the preparation of the report (para. 39 of the concluding observations)

6. Departing from its previous practice the Federal Government involved the NGO forum "World Summit for Social Development" in the preparation of the present report. It thus followed the recommendation of the Committee.

3. Optional protocol (paras. 11 and 27 of the concluding observations)

7. The Federal Government elaborated its position on the issue of an optional protocol to the Covenant (introduction of a complaint procedure for individuals) in its comments submitted to the United Nations in November 1998. The text is attached as an annex.

4. Alignment of the living conditions in East and West Germany (paras. 7, 12 and 38 of the concluding observations)

8. In his policy statement in the German Parliament on 10 November 1998 Federal Chancellor Gerhard Schröder said the following:

> "Equal living standards in East and West are clearly still a long way off. In concrete terms that means the 1993 Solidarity Pact will remain the financial backbone of economic reconstruction. The active labour market programmes in the new Länder ... we will maintain at the same level and put onto a long-term footing.
>
> "Through education and training measures we hope as many as possible will return to jobs in the first labour market. However, for a considerable period there will still be a strong need in Eastern Germany for an active employment policy on a relatively large scale. We will also extend the special initiatives for investment in the new Länder that are due to expire at the end of 1998 ...
>
> "... what we must and will improve is the targeting of our development and reconstruction measures in the new Länder. The Government will draw up a three-fold promotion strategy: to ensure that the new Länder retain their promotion priority; to intensify development of the infrastructure, especially in economically disadvantaged areas, and to strengthen the innovative capacity of East German companies and develop financial instruments catering to their special needs. There is a clear need to strengthen their equity capital base ...
>
> "We intend to intensify efforts aimed at renewing and improving the urban environment. That will also enable more people to get back to work.
>
> "As Chancellor I have declared that reconstruction of the Eastern Länder will be my personal concern. I will be in overall charge. We shall concentrate these powers on the Federal Chancellery. A Minister of State will assist me, chiefly as regards coordination with the Eastern Länder governments. The Cabinet will meet once every two months in one of the new Länder in order to discuss the situation with the relevant Land government and move forward concrete projects."

9. The efforts undertaken in different areas to reach the objectives laid down in the Chancellor's policy statement are described at various points in that part of the report which covers individual rights guaranteed by the Covenant (II.B).

## II. DEVELOPMENTS AFFECTING THE INDIVIDUAL RIGHTS GUARANTEED BY THE COVENANT

### A. General provisions of the Covenant

#### On article 1 - The peoples' right of self-determination

10. Reference is made to the statements in the previous report and to the replies to questions 5 and 6 of document E/C.12/Q/GER.1.

#### On article 2 - Non-discrimination in the execution of rights (para. 2)

##### 1. Protection of minorities, in particular Sinti and Roma (para. 18 of the concluding observations)

11. In addition to the very extensive statements in the third report and in the reply to question 6 of document E/C.12/Q/GER.1, the following statements are made.

12. Germany continues to attach great importance to the protection of minorities in order to maintain peace in the community of peoples and to encourage fruitful living together at the national level. For Germany, the Framework Convention for the Protection of National Minorities of the Council of Europe took effect on 1 February 1998. This instrument applies to the Danish minority, to the Sorbian people, to the Frisians in Germany and to the German Sinti and Roma. The members of all these four groups are German nationals. The European Charter for Regional or Minority Languages entered into force for Germany on 1 January 1999. In Germany, Danish, Upper and Lower Sorbian, North and Sater Frisian, as well as the Romany of the German Sinti and Roma, are considered minority languages within the meaning of the Charter and are hence protected and encouraged by means of concrete obligations.

13. There are no signs of discrimination against the German Sinti and Roma - for example in terms of housing, education and employment; therefore no specific legal or administrative measures have been taken.

14. As mentioned before, the Central Council of the German Sinti and Roma demands that the German Sinti and Roma be represented in the supervisory boards of the broadcasting stations. A constitutional complaint on these grounds was not accepted by the highest German court. In its decision of 25 August 1998 (1 BvR 2487/94) the Federal Constitutional Court found no violation of the basic right to equal treatment as laid down in article 3 of the Basic Law. It found that the Sinti and Roma were not treated differently from the Danish and Sorbian minorities since these ethnic groups are not represented in the bodies of broadcasting stations either. The Jewish population group is the only group represented in the supervisory bodies solely on the grounds of being a religious community. This criterion, however, cannot be claimed by the minority of the Sinti and Roma since they see themselves not as a religious community, but as a minority with its own language and cultural identity.

2. Integration of foreign workers and their families

15. First, reference is made to the replies to question 8 of document E/C.12/Q/GER.1.

16. Since the submission of the third German report the following changes have occurred:

(a) Paragraph 10. The total number of foreign workers and their family members is 4.8 million. The total number of foreigners living in Germany is 7.3 million of whom there are 2.1 million persons from Turkey;

(b) Paragraph 11. Integration means incorporation in the German society and its value system while recognizing the cultural autonomy and identity of the foreigners. The aim of integration policy is to enable foreigners to lead a life in Germany which is characterized by equal treatment in economic, social and cultural terms. Efforts are made to remove disadvantages, to improve equal opportunities - in particular with regard to access to employment - and to strengthen the foreigners' self-esteem. An important element in this context is the envisaged eased access to the German citizenship. The Act to reform the nationality legislation dated 15 July 1999, whose essential parts will enter into force on 1 January 2000, implements this central internal policy project of the Federal Government. Details are given under section II.B, article 10, item 4, below. As a result of this legal amendment, the words "... and respect for the maintenance of their cultural identity" in the penultimate sentence of paragraph 11 of the third report have to be deleted;

(c) Paragraphs 13 and 14 are reworded as follows:

The measures of the Federal Ministry of Labour and Social Affairs to encourage the linguistic, occupational and social integration of foreign workers and their family members are continued. In the 1999 budget of the Federal Ministry of Labour and Social Affairs approximately DM 94 million have been earmarked for this purpose. Since 1968 the Federal Labour Ministry has spent roughly DM 1.75 billion on integration measures. The measures of the Federal Labour Ministry complement the labour market and occupational integration measures of the Federal Employment Service as well as the integration measures implemented by other Federal ministries, the Länder, the municipalities and also private organizations. The measures funded by the Federal Labour Ministry are focused on:

- The support for the social counselling services for foreigners to improve their social integration and assistance to enhance the intercultural awareness of the social services;

- The promotion of German language skills to improve their linguistic integration by means of German language courses which the Federal Labour Ministry has supported with just under DM 500 million;

- The enhancement of occupational integration, in particular support for young foreigners in the transition from school to work. They are motivated to take up

training and are offered supplementary support so as to give them equal chances on the labour market. The special skills of young foreigners are to be used and reinforced. Good examples in this context are:

Binational vocational training projects in cooperation with Greece, Spain, Italy, Turkey and Portugal with additional technical instruction in their mother tongue and periods of work experience in their respective countries of origin;

Courses to improve the integration prospects of young foreigners;

Community- and neighbourhood-based projects to motivate foreigners for vocational training and further training as well as projects to promote occupational and language skills of former contract workers of the former GDR;

Creation of training places in foreign companies in Germany.

- The integration of foreign women and girls, for example through specific integration courses or skill training in the fields of care for the sick, the aged and for families, as well as for occupations in the field of home economics, office and media work, and the use of their specific abilities (bi- or multilingual skills, bicultural competence).

- The improvement of the coexistence of Germans and foreigners, for example by combining vocational integration projects with measures to overcome xenophobia; support for the establishment of local and regional coordination centres and cooperation networks, raising the awareness on the part of the local and regional authorities as well as of the German and foreign associations for the integration problems that foreigners have to face; development of an intercultural conflict management in companies, in Christian-Muslim environments, in the field of health and sports and in case of problems of ethnization and self-ethnization (i.e. tendencies of self-isolation of migrants from mainstream society); monitoring the move of foreign workers and their families into the former Eastern sector of Berlin to detect and counteract xenophobic tendencies at an early stage;

- The information measures in order to report on issues relating to the policy towards foreigners and the integration of foreigners as well as on the living together of Germans and foreigners. Important measures in this context are: the information service "Foreigners in Germany"; an editorial service for local editors in the form of texts ready for printing (matrix pages); a subsidy to radio SFB 4 "Multi-Kulti" for reports on labour market, social and foreigners' issues; the posters "Foreigners in the Federal Republic of Germany" and "Foreigners in the European Union"; the leaflet "First information for new Turkish migrants", in Turkish; the brochure "Social Security at a Glance" published by the Federal Labour Ministry in Turkish;

- Courses for multipliers: seminars for regional studies to provide socio-cultural background information on the former recruitment countries of the Federal Republic of Germany. Theme-oriented multiplier seminars provide basic information on the

policy towards foreigners; they inform about the experience with different integration approaches and they show ways to improve the living together of Germans and foreigners.

3. The fight against racism and xenophobia (para. 9 of the concluding observations)

17. In addition to the reply to question 10 of document E/C.12/Q/GER.1 the following statements are made.

18. The fight against racism and xenophobia is an important issue for the Federal Government in which the aspect of prevention has a special significance in the framework of the intellectual and political debate.

19. A central instrument in this intellectual and political debate is the extensive information work of the Federal Government which is geared to specific target groups both in form and content. Various publicity campaigns which have proved successful in the past will be continued. These include, for example, the joint information campaign launched in March 1993 by the Federal Government and the Länder governments under the slogan "FAIRNESS AND UNDERSTANDING - Respect for human dignity - Against xenophobia", the organization of six to eight courses per year for multipliers dealing with the issues of extremism and violence, the publication of four to six brochures annually in the context of the series "Texts dealing with Internal Security" and the annual report of the Office for the Protection of the Constitution which provides an information basis for assessing, inter alia, the dangers which racism and xenophobia pose to the democratic constitutional State.

20. Scientific research into the causes and motives of racism and xenophobia helps to further develop and optimize sustainable prevention approaches. Therefore, the Federal Ministry of the Interior evaluates recent studies on these phenomena and, if necessary, starts research projects of its own. At present the German Youth Institute (Deutsches Jugendinstitut) in Munich and the University of Jena carry out a broad research project on right-wing suspects and offenders commissioned by the Federal Ministry of the Interior and sponsored by the Volkswagen Foundation; this project follows up on the study entitled "Analysis of xenophobic criminal offenders" which was finalized in 1994. In view of the wider empirical basis, the combination of quantitative and qualitative survey methods and the extension of its scope the present research project is expected to provide substantial new insights into the causes and motives of racism and xenophobia. Another research project on the phenomenon of hooligan violence is conducted by the University of Erlangen on behalf of the Federal Ministry of the Interior. This study also examines how far xenophobic or right-wing motives play a role for the specific group of hooligan offenders.

21. The analysis of racism and xenophobia is a task for society as a whole. Therefore, the Federal Government continues the dialogue which was initiated between the Government and the non-governmental organizations in the framework of the European Year against Racism (1997). A corresponding exchange of information and experience takes place primarily in the Forum against Racism set up in March 1998.

22. However, sustainable success in the fight against extremism, xenophobia and violence requires a far stronger involvement of the relevant groups of society (families, schools, churches, sports associations, trade unions, employers, etc.). For this purpose the Federal Government envisages the establishment of an "Alliance for democracy and tolerance - against extremism and xenophobia". The public is to be informed as broadly as possible; it is to be mobilized and made aware of these issues. Apart from the aspect of information priority is also to be given to the formation of values. It is important for the success of the alliance that the various measures and actions against racism and xenophobia taken at different levels are effectively coordinated and focused.

23. In 1998 the number of reported right-wing acts of violence went down to 708 compared to 790 in the year before, which means a decrease by 10.4 per cent. This decrease is attributable inter alia to the resolute action of the police, rigorous prosecution and last but not least to the above-mentioned preventive measures of the Federal Government. Therefore the fight against racism and xenophobia in their different shapes and forms remains an important future task which the Federal Government pursues attentively and persistently.

### 4. Re-employment of public servants of the former GDR after the unification of Germany (para. 5, second item; paras. 16 and 36 of the concluding observations)

24. The Federal Government first refers to the reply to question 11 of document E/C.12/Q/GER.1. It regrets that the Committee did not take full account of this reply in the wording of its suggestions and recommendations contained in paragraphs 16 and 36. It notes that the Committee had largely followed the line presented in a letter of a non-governmental organization, the Society for the Protection of Civil Rights and Human Dignity (Gesellschaft zum Schutz von Bürgerrecht und Menschenwürde - GBM). The Federal Government not only accepts but expressly appreciates that in examining and evaluating the reports on the national implementation of the Covenant the Committee takes the views and statements of non-governmental organizations into account. However, in the case of the GMD's statement the Committee should have noticed that the figure given therein - 12.1 per cent of public servants within the science and technology sector of the former GDR - explicitly referred to the end of 1992. Even if this non-verifiable figure were true - which the Federal Government doubts - it would have already been six years old at the time of the communication to the Committee (letter of the GBM dated October 1998).

25. The Federal Government does not understand either that the Committee on the one hand refers to the fact that this issue was raised in the ILO Committee of Experts on the Application of Conventions and Recommendations but, on the other hand, fails to mention that since the Federal Government's 1997 report on ILO Convention No. 111 had drawn attention to the recent German case law concerning the special grounds for termination contained in the Unification Treaty and in particular to four judgements of the Federal Constitutional Court of 8 July 1998, the ILO Committee of Experts expressly welcomed these recent developments in the case law in its report to the 86th session of the International Labour Conference (1998). The English and the French versions of the corresponding passages in Report III (Part 1 A) of the 86th session (1998) of the International Labour Conference are attached as annexes 2 (a) and 2 (b).*

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* Available for consultation from the Committee's secretariat.

26. At the direct Federal level 17,997 public servants had left the public service by the end of 1997 on the basis of the grounds for exceptional termination contained in the Unification Treaty (16,655 of whom by means of ordinary dismissal, 1,342 by means of exceptional dismissal procedures).

27. The Federal Government has no comprehensive figures on the numbers of persons who had left the public service at the Länder level. It is known, however, that, for example, the Free State of Thuringia screened approximately 40,500 persons in the cultural field. About 1,100 persons left because they lacked personal suitability and some 370 persons left because they had worked for the Ministry of State Security or the Office for National Security or because of false statements about this. This means that a total of 1,470 persons had left, which is a rate of less than 3.7 per cent.

28. It can be assumed that the situation in the other Länder concerned is not significantly different.

29. When looking at the numbers of public servants of the former GDR who were not re-employed after unification, one has to bear in mind that the public service of the former GDR was highly overstaffed. In the former GDR the share of public servants in the total population amounted to 14.5 per cent compared to merely 7.9 per cent in the same period in West Germany. Therefore, the Contracting Parties to the Unification Treaty shared the view that it would be impossible to maintain the public service system of the GDR alongside the system of administration which existed in the Western part of Germany. This applied in particular to the science and technology sector of the former GDR. It was known for example that the research sector of the former GDR employed far more technical assistants than necessary. In order to reach a certain degree of self-sufficiency the research establishments produced instruments, equipment, etc. themselves to a larger extent than necessary. The division of labour in the form of procurements and supplies from contractors had not reached the level that is usual for West Germany.

30. In this respect the Unification Treaty provided the basis for terminating existing employment relationships inter alia for lack of need, because the previous employment unit was dissolved or because the present employment or an employment elsewhere was no longer possible because of a merger, an incorporation or a substantial change of the structure of the employment unit (article 20 (1) of the Unification Treaty in conjunction with annex I, chapter XIX, subject A, section III, No. 1 (4)). For the aforementioned reasons, this provision, with its limited application until 31 December 1993, was widely used.

31. Finally, the Federal Government once again strongly rejects the reproach that persons in the public service of the former GDR were discriminated against in the Federal Republic of Germany. The Unification Treaty rather provides for possibilities for termination of employment which - as confirmed by the Federal Constitutional Court - are unobjectionable in their constitutional aspects and comprise social protection for those affected by the terminations.

32. The provision was that all citizens of the former GDR who had lost their jobs in the course of the German unification (which includes also public servants who were not

re-employed) were, depending on their age, entitled to either unemployment benefit (without having paid contributions to the unemployment insurance before) or to the transitional old-age benefit which was specifically introduced by the Unification Treaty or to the old-age pension.

33. Since there is no discrimination against persons in the public service of the former GDR the Federal Government sees no reason to offer these persons compensation or appropriate pension plans beyond the above-mentioned provisions by the social protection systems.

5. Religious communities (para. 9 of the concluding observations)

34. First, reference is made to the reply to question 12 of document E/C.12/Q/GER.1. In addition the following statements are made.

35. At present, various political parties in Germany are reflecting how - apart from the three models of Islamic religious instruction practised in Germany today - Islamic religious instruction in German given in accordance with the tenets of the respective religious community and under the supervision of the State could be introduced into the ordinary school curricula pursuant to article 7 (3) of the Basic Law. This would require adequate training facilities for teachers which do not yet exist in Germany.

36. A precondition for such religious instruction is that the Muslim side name one single point of contact. Up to now there is no single representation or central association of Muslims in Germany. Without such a central organization regular Islamic religious instruction is not possible given the existing variety of Islamic lines of thought and origin-based Islamic trends in Germany, which means that we would have to stick to the present, though unsatisfactory, practice. The statutory regulation of religious instruction comes under the competence of the Länder.

37. On 1 January 1999 the Jewish community in Germany comprised 76 local communities with a total of 74,289 members.

38. The two big Churches in Germany play a significant role in the process of integrating foreign citizens.

39. Shortly after the first foreign workers arrived in Germany in the 1950s, the Churches in Germany recognized the cultural and political challenge that could arise from the considerable numbers of incoming foreign workers. The Churches were the first groups of society to start a dialogue with workers from other denominations and non-Christian religious communities. Until today local Church-run initiatives are the backbone of the intercultural work in Germany.

40. Within the existing institutional framework as well as through newly created institutions the Churches conduct the dialogue with foreign citizens and in general also provide practical help and assistance.

41. The Churches have the following institutions to promote integration, among others:

(a) Protestant Church (EKD):

- Commission for foreigners' issues and ethnic minorities at the Council of the EKD, which works out concepts for the integration and the practical approach to issues relating to refugees and advises the Council of the EKD in such matters;

- Church office of the EKD: Section for Orthodoxy, Islam and world religions; Section for foreigners and ethnic minorities;

- Standing Conference of the experts on foreigners' issues in the EKD, in the member Churches of the EKD and in the Protestant relief organizations for persons of non-Christian faith;

(b) Catholic Church:

- Christian-Islamic Meeting and Documentation Centre (Christlich-islamische Begegnungs - und Dokumentationsstelle - CIBEDO), a body set up by the Secretariat of the German Bishops' Conference;

- Office for interreligious dialogue at the Vicariate-General of the Archdiocese of Cologne;

- Oecumenical Contact Office for Non-Christians in Munich.

42. There are numerous further initiatives of the Churches to encourage meetings between the locals and migrants. They organize joint events and celebrations where people can meet in an uncomplicated way and do various things together. The following should serve as examples:

- Intercultural weeks;

- Mutual visits at the "open day of the mosques";

- Joint invitations during Christmas time and Ramadan;

- Invitations of families for joint outings;

- Parish premises that are made available to foreign and local youth groups.

43. The local Christian communities organize assistance for migrants, for example help in dealing with the bureaucracy or in coping with problems of finding their way in the new surroundings.

44. In 1997 the two big Churches published the "Joint Position of the Churches to the Challenges Caused by Migration and Flight". In this paper the Churches describe what they see as their responsibilities towards the migrants.

45. The Churches mentioned in particular the following points:

- Overcoming xenophobia, racism and violence;
- Flight and migration as oecumenical challenges;
- Prospects for action by the Churches;
- Tasks for the Christian communities arising from living together with foreigners;
- Tasks of the Church executive.

46. The Churches have realized that interreligious dialogue is an important precondition for peaceful coexistence. In the decades after the Second World War a successful Christian-Jewish dialogue took place in numerous events organized by the Christian-Jewish societies. Following its model a Christian-Islamic dialogue was set up some time ago, yet it could be stepped up. Apart from the above-mentioned local initiatives the annual Church conventions constitute a forum for interreligious dialogue. Moreover, the dialogue with Islam is sought in many events organized in the context of the educational work of the Churches, above all in the Church Academies.

47. Recently the two big Churches advocated the introduction of Islamic religious instruction into the regular school curricula in accordance with article 7 (3) of the Basic Law (see paras. 35-36 above).

6. Asylum-seekers (paras. 17 and 28 of the concluding observations)

48. In addition to the replies to question 13 of document E/C.12/Q/GER.1 the following statements are made.

49. Asylum-seekers are allowed to stay in the Federal Republic of Germany to permit the processing of their application for asylum (section 55 of the Asylum Procedure Act - Asylverfahrensgesetz [AsylVfG] - permission to reside). They are issued a corresponding certificate (section 63 of the Asylum Procedure Act) which is accepted as proof of their identity (section 64 of the Asylum Procedure Act). Permission to reside is geographically restricted to the district of the respective aliens' office (section 56 of the Asylum Procedure Act). Asylum-seekers normally require a special permit if they want to leave this district (sections 57, 58 of the Asylum Procedure Act). The permission to reside may be issued subject to certain conditions (section 60 of the Asylum Procedure Act).

50. Insofar as these regulations governing the status of foreigners touch on the rights laid down in the Covenant at all, they are not discriminatory and are confined to what is necessary and appropriate to process the application. This contributes to the internationally outstanding degree of readiness on the part of Germany to take in refugees.

51. The Federal Government holds the view that there is no apparent connection between the period of time needed to process asylum applications and the rights laid down in the Covenant.

At any rate, the processing period in Germany is not unduly long. Any delays for which the asylum-seeker is responsible, especially failures to cooperate, cannot always be fully made up for by the authorities. At present (position of April 1999) about 15 per cent of all applications for asylum are processed by the Federal Office for the recognition of foreign refugees within two weeks. The remaining applications are in general processed within three to four months. If the asylum-seeker uses his right to take court action against the decision of the Federal Office the proceedings before the administrative court follow.

52. Further statements on item 28 of the concluding observations are to be found in those parts of the report which deal with article 11 of the Covenant.

On article 3 - Equality between men and women

53. In addition to the replies to questions 14, 15, and 16 of document E/C.12/Q/GER.1 the following information is provided.

54. The programme "Women and Employment" adopted by the Federal Cabinet at the end of June 1999, gives new thrust to the equal participation of women in business and on the labour market. Central measures of this programme are:

(a) An Equal Rights Act for the Federal Administration. The Federal Act on the Promotion of Women (Frauenförderungsgesetz) has not yet produced the results necessary to comply with the constitutional mandate. Therefore, this Act will be amended by an Equal Rights Act (Gleichstellungsgesetz) for the Federal administration which lays down equal rights plans with binding targets. Training places are to be allocated in a way which ensures the advancement of women above all in modern occupations with good prospects for the future. The responsibilities and the right to oppose of the Commissioners for Women's Interests are to be strengthened;

(b) An Act on the Staffing of Federal Bodies. The share of women in political counselling bodies is a mere 12.7 per cent. To improve on this, the Federal Government intends to amend the Act on the Staffing of Federal Bodies in such a way that more women are appointed in the practical implementation of the Act;

(c) Equal rights in the private sector. The Federal Government intends to realize equal rights for women in private industry through a dialogue with the business community and the associations. It will support companies and firms which successfully strive for equal rights for women and it will prepare equal rights regulations and instruments that take account of the different situation of companies. Moreover the programme "Women and Employment" is meant to:

- Improve the training prospects of young women, above all in occupations with good prospects for the future in the information society;

- Enhance job opportunities and career prospects for women;

- Remove disadvantages for women who start a business;

- Further reconcile family obligations and paid employment and help to further involve men in family tasks;

- Counteract income and wage discrimination against women; and

- Raise the proportion of women in the research and science sector.

55. The Act to amend the Civil Code which entered into force on 3 July 1998 and the Labour Courts Act are the pieces of legislation providing for sanctions in case of violations of the prohibition to discriminate against women in respect of their access to employment as well as in respect of their career advancement. The new rules implement the standards of the European Court of Justice which it established in its decision handed down on 22 April 1997 concerning the issue of damages in gender-related discrimination cases. In detail:

- The compensation standard of section 611a, paragraph 2, of the German Civil Code now provides for liability regardless of fault;

- The distinction of the European Court between the discriminated applicant with the best qualifications and the other discriminated applicants has been introduced into our legislation. For the best qualified applicant the amount of damages payable is no longer limited to three months' earnings. For all other applicants the old legislation continues to apply;

- The procedure for restricting total amounts has been repealed.

56. Jurisdiction, too, has dealt with the question of equal treatment for men and women and/or gender-related discrimination. Decisions were passed regarding the following questions:

- The circumstances (if any) in which gender-specific job advertisments and/or different treatment of the sexes are permissible;

- Damages in case of discrimination during the application procedure; and

- Affirmative action for women by means of a women's quota.

## B. Individual rights guaranteed by the Covenant

### On article 6 - Right to work

#### 1. Measures against unemployment (para. 5, first item; paras. 14, 26 and 29 of the concluding observations)

57. The elimination of high unemployment is the biggest challenge for politics and society on the threshold of the new century. A high employment level in a globalized economy is not utopia but a realistic aim that can be achieved gradually with a problem-oriented combination of financial, social and economic policy activities.

58. Positive development on the labour and vocational training market requires permanent coordination and cooperation between Government, trade unions and the economy. Therefore, the federal Government invited representatives from the business community and trade unions to join an "Alliance for jobs, training and competitiveness" in December 1998.

59. This Alliance is based on continuity and a process of understanding in which mutual confidence is to be developed but where also different interests and different opinions may be expressed - however, always oriented towards the aim of jointly reducing unemployment. In order to implement this aim agreement was achieved among the Alliance partners on the following joint principles:

- For a sustainable increase in employment and for an improvement of the economic dynamics, rapid and comprehensive reforms are indispensable;

- Effective contributions by the State, the business community and the trade unions as well as commitment by both sides of industry are necessary. All parties involved have to cooperate in order to achieve tangible employment results. There is a common understanding that the Alliance partners' (i.e. the collective bargaining parties and political leaders) independent activities are based on the objectives of the Alliance and thus support the implementation of the Alliance's agreements. Collective bargaining autonomy remains unaffected;

- Training within the dual system of vocational training (company and vocational school) offers good opportunities for a successful integration into the labour market. Every young person in Germany who is willing and able to join will get a vocational training place. Furthermore, the "Immediate Programme to Reduce Youth Unemployment" was enacted on 1 January 1999 with the aim of giving 100,000 young persons a concrete chance at the training places or the labour market. By the end of September 1999, 188,000 young people had already joined measures under the Immediate Programme;

- The partners involved support the Länder, municipalities, trade unions and employers' associations as well as employers and works councils in their joint activities to identify new options to maintain and develop new employment in their respective areas. The Alliance will support these efforts by a corresponding design of the framework conditions.

60. Based on these principles, the "Alliance for jobs, training and competitiveness" predominantly pursues the following joint objectives:

- A permanent reduction of the statutory non-wage costs;

- A structural reform of the social insurance systems;

- A distribution of work and flexible working hours promoting the creation of jobs;

- A reform of business taxation;

- Improved possibilities to retire from working life early without pension reductions;

- Developing new employment areas and training opportunities for low-skilled workers;

- Fighting youth and long-term unemployment, in particular by improving training and further training possibilities;

- Improved access of small and medium-sized enterprises to venture capital;

- A collective bargaining policy that facilitates the creation of jobs.

2. Development of the labour market situation

(a) Employment

61. At present employment is slightly increasing in Germany. In December 1998, 34.1 million persons were gainfully employed (28.0 million in West Germany and 6.1 million in East Germany), i.e. 159,000 persons more than in December 1997. In previous years employment had decreased considerably. In the year 1993, 35.2 million persons were gainfully employed (29.0 million in West Germany and 6.2 million persons in East Germany). Nonetheless, employment is still higher in West Germany than before reunification: in 1988 there were only 27.2 million gainfully employed persons in West Germany.

(b) Employment of women

62. In West Germany the male participation rate in the labour market has decreased slightly over the last six years (from 82.2 per cent in 1991 to 80.5 per cent in the year 1997, rates of gainful employment of the 15- to 65-year-olds according to a microcensus), whereas the female labour participation rate has increased slightly (from 58.4 per cent to 60.3 per cent). In the East labour participation rates have decreased considerably, and the participation rate has decreased more for men (from 86.0 per cent to 79.7 per cent) than for women (from 77.2 per cent to 73.6 per cent). The male participation rate has meanwhile attained the same level in East and West Germany while women are still working to a markedly bigger extent in East Germany than in West Germany. A comparison of these employment rates with the employment rates of the 1980s does not make sense as the data collection methods were changed in 1990. The following changes are to be mentioned as compared to the third report:

(a) Paragraph 92. The number of non-German compulsorily insured employees amounted to 1,990,000 in 1998 in the old Länder and was thus 0.7 per cent lower than the value for the previous year. Their share in the overall employment rate amounted to 9 per cent. Since 1994 the employment of foreigners has decreased in absolute and relative numbers;

(b) Paragraphs 93/94. The rather modest economic development in the old as well as in the new Länder since 1995 has led to a decrease in gainful employment and to an increase in

unemployment. In the old Länder the number of unemployed persons has increased by 340,000 to 2,904,000 since 1995. The unemployment rate has increased to 9.4 per cent. While there had been a clear link between an increase in unemployment and the influx of foreigners at the beginning of the 1990s (the increase in the foreign residential population between 1989 and 1997 amounted to 2,830,000 persons which corresponds to an increase of 63 per cent) the increase in unemployment was mainly explained by the loss of jobs in recent years. In 1998 the labour market situation improved. Compared to 1997 the number of unemployed persons decreased by 117,000. In March 1999 the number of unemployed persons was 178,000 lower than the previous year; this corresponds to 2,897,000 persons;

(c) Paragraph 95. As a consequence of increasing unemployment the number of long-term unemployed persons increased by 233,000 to 1,070,000 between 1995 and 1998. The share of long-term unemployed persons in the total number of unemployed persons increased to 36.8 per cent. The improvement tendencies noticeable on the labour market have, however, had a positive effect on the number of long-term unemployed persons. In March 1999 the figure of long-term unemployed persons was 1,010,000, i.e.102,000 (9.2 per cent) lower than a year previously. Their share of all unemployed persons decreased to 34.9 per cent;

(d) Paragraph 97. At 541,236 persons the number of unemployed foreigners was higher in March 1999 than in the year before (December 1998: 538,176) so that their unemployment rate of 20.4 per cent markedly exceeded the overall unemployment rate of 12.3 per cent. By 1997 unemployment of foreigners had increased from its previously low level of 203,000 to 521,597, i.e. by a factor of more than 2.5. Of the foreigners registered as unemployed in West Germany by the end of December 1997, 72.8 per cent came from non-EU countries;

(e) Paragraph 100. On an annual average the number of young unemployed persons (under 25 years) decreased to about 472,000. The unemployment rate for this age group thus amounts to 11.8 per cent before seasonal adjustments. After positive development in 1995 with approximately 431,000 unemployed persons on annual average (9.5 per cent), the rate had gone up to about 12.2 per cent (approximately 501,000 persons on annual average) by 1997;

(f) After paragraph 103 the following paragraph is to be inserted:

> As a consequence of rising unemployment the number of long-term unemployed persons increased by 233,000 to 1,070,000 between 1995 and 1998. The share of long-term unemployed persons in the total number of unemployed persons increased to 36.8 per cent. The improvement tendencies noticeable on the labour market have, however, had a positive effect on the number of long-term unemployed persons. In March 1999 the figure of long-term unemployed persons was 1,010,000, i.e. 102,000 (9.2 per cent) lower than a year previously. Their share of all unemployed persons decreased to 34.9 per cent;

(g) Paragraphs 104/105. In the new Länder unemployment increased in the same amount as gainful employment decreased. The number of unemployed persons increased by 328,000 to 1,375,000 between 1995 and 1998. This corresponds to an unemployment rate

of 18.2 per cent in the year 1998. During 1998 the labour market situation improved, however. In March 1999 the number of unemployed persons was 1,392,000, i.e. 157,000 (10.1 per cent) lower than the previous year;

(h) Paragraph 106. The increase in unemployment coincided with an increase in long-term unemployment in the new Länder, too. The number of long-term unemployed persons increased by 148,000 to 453,000 between 1995 and 1998. The share of long-term unemployed persons in the total number of unemployed persons was 33.0 per cent in 1998;

(i) Paragraph 109. Unemployment of foreigners plays only a subordinate role in the new Länder. By the end of March 1999, 33,238 foreigners were registered as unemployed. This corresponds to a share of the total number of unemployed persons of only 2.4 per cent. This is mainly explicable by the low number of residents with foreign nationality;

(j) Paragraph 111. On annual average approximately 144,000 unemployed persons were under 25 years of age. This corresponds to a share of 10.5 per cent. The unemployment rate of this age group is 17.0 per cent, on the one hand lower than the total unemployment rate in the new Länder, but on the other hand clearly higher than the comparable rate in the old Länder;

(k) Paragraph 120. In the old Länder the foreigners' unemployment rate was as follows (overall unemployment rate in brackets):

1996: 18.89 per cent (10.1 per cent)
1997: 20.4 per cent (11.0 per cent)
1998: 19.6 per cent (10.5 per cent)

(l) Paragraph 121. Over 500,000 foreigners were registered as unemployed in September 1998, 77.1 per cent of whom had not completed any vocational training. This share has not changed over the years. By comparison, only 33 per cent of all registered unemployed Germans have never completed any vocational training;

(m) Paragraph 122. In September 1998, 80.7 per cent of the unemployed foreigners were wage-earners. For Germans, this figure was 61.7 per cent.

3. Measures to create employment

(a) General remarks

63. In order to supplement the reply given to question 17 of document E/C.12/Q/GER.1, the following information is given.

64. In principle, it is the enterprises' task to create jobs in the social market economy. In order to ensure that they comply with their task, the framework conditions for investments and new jobs must be acceptable. The new Government has already taken many measures to improve these framework conditions markedly.

65. It is the task of an active labour market policy to integrate in particular persons who would not find work without additional help into regular employment. With the help of the new labour market promotion legislation that was introduced into the Third Book of the Social Code and entered into force in 1998, active labour market policy became strongly oriented towards this task. The new Government will ensure that the newly developed labour market policy instruments will be used even more efficiently and shall examine additional possibilities as to how those persons who in spite of occupational qualification or financial help cannot be placed in regular employment, can, if necessary, remain in a public employment relationship for an extended period.

66. The amendment to the Act on the Protection against Unfair Dismissal, referred to in the reply to question 17 of document E/C.12/Q/GER.1, has not proven useful and was thus withdrawn again. Moreover, the introduction of a demographic factor into the pension adjustment formula which was provided for in the 1999 Pension Reform Act and the restructuring of pensions payable on account of reduced earning capacity have been suspended till the end of the year 2000. In this way extra time is to be gained in order to find fairer social alternatives to the measures suggested by the previous Federal Government.

(b) Significance of an active labour market policy

67. The description in paragraph 116 of the third report is updated as follows.

68. Expenditure for active labour market policies has reached a high level in Germany. In 1998, DM 39 billion were spent on active labour market policies of which approximately DM 20 billion went to the new Länder. In 1999, DM 45.3 billion are available, DM 22.8 billion of which are reserved for the new Länder. In this way it will be possible to offer programmes reaching about 1.4 million persons on annual average.

Funds for an active labour market policy since 1994 (overview)

| Year | DM (billion) |
|---|---|
| 1994 | 53.5 |
| 1995 | 49.8 |
| 1996 | 46.8 |
| 1997 | 37.1 |
| 1998 | 39.0 |
| 1999 | 45.3 (earmarked) |

(c) Employment assistance for long-term unemployed persons

69. In respect of the reply to question 20 of document E/C.12/Q/GER.1 the following additions need to be made.

70. The federal programme "Employment Assistance for Long-Term Unemployed Persons" was extended till the year 2001. It is thus guaranteed that the integration of long-term unemployed persons into regular employment can be funded with DM 750 million per year. With this amount about 50,000 persons can be reached. The supplement is as a rule granted for

one year. It is designed in a digressive way and amounts to 60 to 80 per cent of the last gross income in the first half year and 40 to 60 per cent in the second half year depending on the length of the previous period of unemployment of the long-term unemployed person.

(d) Measures to integrate people with disabilities into working life

71. As far as paragraph 29 of the concluding observations of the Committee is concerned, attention is drawn to the bilingual memorandum "Eingliederung Behinderter in der Bundesrepublik Deutschland/The Integration of Disabled Persons in the Federal Republic of Germany" - in particular to paragraphs 71-96 of this memorandum - attached as an annex to the reply to question 21 of document E/C.12/Q/GER.1. The measures for the integration of disabled persons into working life outlined in the memorandum apply of course also to disabled persons in the new Länder. Moreover, the Federal Government has adopted an immediate programme to reduce youth unemployment. The objective agreed at the Luxembourg EU Employment Summit, i.e. to submit work and/or training offers to young unemployed persons before they have been out of work for six months, will be pursued with particular urgency in the framework of this programme also with regard to young disabled persons in East Germany. Deficits regarding school and vocational education as well as threatening long-term unemployment can thus be dealt with effectively.

72. The second aim agreed upon at the Luxembourg Employment Summit, i.e. to make a new start possible for unemployed adults before they have been unemployed for 12 months, is given special attention. The Federal Employment Service wants to implement these objectives practically and in cooperation with other competent organizations in the case of every single disabled person. The same applies for disabled persons as far as the third binding agreement of the Luxembourg Employment Summit is concerned, i.e. to offer 20 per cent of the unemployed persons vocational training measures to improve their employability.

73. In a nationwide pilot project that started in 1998 and will expire by the year 2001 it will be examined whether an extension of the "particular promotion of hiring and employing disabled persons from the compensation levy budget" to cover fixed-term employment contracts increases employers' preparedness to recruit unemployed severely disabled persons.

(e) Measures to improve vocational qualification opportunities of young foreigners

74. Paragraph 129 of the third report is to be updated as follows.

75. Special abilities of young foreigners are to be used and strengthened. This happens by, inter alia, binational training projects in cooperation with Greece, Spain, Italy, Turkey and Portugal. Training takes place in recognized occupations with additional mother-tongue tuition in technical subjects and internships in the country of origin. This leads to increasing mobility and flexibility on the German labour market, the labour markets of the countries of origin and of the European Union.

76. In paragraph 130 the figure "over 1.1 million" has to be replaced by "approximately 1.3 million".

On article 7 - The right to just and favourable conditions of work

77. The following is to be added to the information provided in the third report and in the replies to questions 21 and 22 in document E/C.12/Q/GER.1:

- The civil servants' pay rates (paras. 138-142 of the third report) were raised by 1.3 per cent in 1996 and by 1.5 per cent in 1998. Since 1 January 1998 a single civil servant in the first step of grade A 2 (lower income bracket) receives a monthly pay of DM 2,832 including pro rata special payments. A married civil servant receives an amount of about DM 3,020; a married civil servant with one child is paid about DM 3,190. To this are added net child benefits in the amount of DM 220. In the new Länder the pay rates amount to 86.5 per cent of the "Western rates" since 1 September 1998;

- Information on the number and frequency of accidents at work and occupational diseases (see paras. 145-148 of the third report) in 1997:

  Reported accidents at work: roughly 1.6 million (3.5 per cent less than in 1996);

  An average of 42 accidents at work per 1,000 full-time employees (1994:51);

  Reported commuting accidents: roughly 240,000 (-7.8 per cent);

  Fatal commuting accidents: 885 (+5.1 per cent);

  Number of suspected cases of occupational diseases reported: roughly 88,800 (decrease as against 1996: 5.4 per cent).

78. In paragraph 8 (eighth item) of the concluding observations of the Committee, the reintroduction of the continuation of full wage payments in the event of sickness announced in November 1998 is mentioned as a positive example of the new Federal Government's policy. By virtue of the Act of 19 December 1998 on corrections in the social insurance system, and to secure workers' rights, this project was implemented and continued wage payments in the event of sickness were again raised from 80 per cent to 100 per cent of the regular wages for the benefit of all workers (article 7 of the said Act).

On article 8 - The right to engage in trade union activities

79. The Federal Government has difficulties in following the considerations and recommendations with regard to the right to strike of civil servants expressed in paragraphs 19 and 31 of the concluding observations of the Committee. As already stated in the reply to question 23 of document E/C.12/Q/GER.1, the fact that civil servants in Germany are not allowed to strike is in compliance with article 8 of the Covenant since paragraph 2 of article 8 explicitly permits restrictions on the right to strike for the public service. If the provision of article 8 (2) had not been part of the Covenant, the Federal Government would have ratified the

Covenant with a reservation to the effect that the right to strike does not apply to civil servants; this was the procedure followed in the context of the ratification of the European Social Charter of the Council of Europe with regard to article 6, paragraph 4.

80. Although it is absolutely clear under the wording of article 8 (2) of the Covenant that the fact that German civil servants are not allowed to strike does not constitute a violation of the Covenant, the Federal Government will in the following outline the reasons which make it necessary to deny German civil servants the exercise of the right to strike.

81. The members of the public service have unrestricted possibilities to organize themselves and jointly represent their interests. With regard to a participation in industrial action, the following differentiations have to be made.

82. With regard to civil servants, the Basic Law provides that they are subject to a duty of service and loyalty under public law which is established by means of an administrative act and determined by laws, legal ordinances and administrative provisions. Civil servants are entrusted with safeguarding and maintaining the functions of the public administration. A strike would be incompatible with this duty of loyalty and would run counter to the purpose of a professional civil service. A strike of civil servants would not harm the employer in the first place. It would above all lead to unreasonable hardship for the general public. The prohibition on strikes therefore guarantees the continuous fulfilment of important public tasks in the interest of the citizens. Since the provisions applicable to civil servants are not laid down by contract or collective agreement but by law and legislation, any industrial action on the part of civil servants would be directed against the legislator and thus against Parliament and its freedom to decide.

83. The prohibition on strikes has nothing to do with a lack of democracy. Persons become civil servants and accept the duty of loyalty on a voluntary basis, and as civil servants, they do enjoy the right of association.

84. As regards civil servants in privatized companies such as the railways and the postal service, the following additional information is provided:

- The constitutional provisions of articles 143a and 143b of the Basic Law explicitly state that civil servants of the Federal Railways and of the Federal Postal Service render services to the private companies without prejudice to their legal status or the responsibility of their employer;

- The right to strike presupposes bargaining autonomy; however, the employment conditions of civil servants - even of civil servants assigned to privatized companies - are not negotiated between bargaining partners but laid down by Parliament;

- When civil servants are assigned to a privatized company, the civil service relationship is fully maintained - as is clearly shown by the constitutional provisions mentioned above. Therefore, it is not possible to continue to enjoy only their rights as civil servants in a largely unchanged way; this must also apply to their duties as

civil servants, i.e. to the status as a whole. A civil servant may release himself from these rights and obligations by changing his status from civil servant to employee of the privatized company.

85. Civil servants assigned to a privatized company thus do not have the right to strike. Besides, no new civil service relationships are established in the privatized areas so that at least in the long run, no civil servants will be employed there.

86. Employees have an employment relationship under private law which is established by the conclusion of an employment contract between a body of the administration of the State (employer) and a salaried employee or worker (employee). They have unrestricted rights of association. The collective bargaining parties negotiate the working conditions. Employees may participate in lawful industrial action.

On article 9 - Right to social security

1. Health insurance

87. The information provided in the third report (paras. 168-183) is updated as follows:

- Paragraph 171: the total expenditure of the statutory health insurance amounted to roughly DM 244 billion in 1996; this corresponds to roughly 46.5 per cent of the total expenses in the German health care sector;

- Paragraph 174: Contribution assessment ceiling on 1 January 1999:

  West Germany: DM 76,500 annually (= DM 6,375 monthly)
  East Germany: DM 64,800 annually (= DM 5,400 monthly)

- Paragraph 181: the third sentence concerning the limit above which compulsory coverage starts is dropped.

88. The third report is supplemented with the following information to be inserted after paragraph 183.

89. The Eighth Act to Amend Book Five of the Social Code dated 28 October 1996 introduced a regulation on additional costs for fillings analogous to the regulation on additional costs for dentures. A person insured with the statutory health insurance who chose an alternative to fillings not covered by the guidelines for contract dentists only had to bear the additional costs of a provision of care which was not medically required.

90. The Act to relieve contributions in the statutory health insurance which entered into force on 1 January 1997 made an important contribution to stabilizing the level of contribution rates and to limit the development of expenses in the statutory health insurance. The measures to limit and reduce expenses allowed for a savings potential in the range of about 0.4 contribution rate points. The contribution rates of the individual sickness funds were reduced by that share with effect from 1 January 1997.

91. The following were the major regulations of the Act:

- Co-payments for drugs were raised. The hardship clauses continued to apply and ensured that children and persons with low incomes would continue to be exempted from co-payments and that chronically ill persons would continue to be protected from undue financial hardship. Even after the increase in co-payments the volume of co-payments was still lower in the Federal Republic of Germany than in almost all European countries and other comparable industrial countries;

- Subsidies for dentures were cancelled for insured persons born after 1979;

- In-patient spa treatment was limited to what is medically necessary. The regular duration of such treatment was reduced from four to three weeks, and the intervals after which it may be repeated were extended from three to four years, including for out-patient spa treatment. Co-payments were considerably raised - with the exception of those for hospital stays and rehabilitation measures directly following hospital treatment. By virtue of labour law regulations, employers were given the possibility to deduct two days per week of spa treatment from an employee's annual leave;

- Sickness benefits were reduced from 80 per cent to 70 per cent of the regular gross earnings;

- Health promotion was focused on measures that were medically necessary. Self-help groups could continue to receive support provided that the medical conditions were precisely defined.

92. To create the long-term prerequisites for a limitation of expenses and a stabilization of the level of contribution rates in the statutory health insurance, the first and second Act to restructure self-government and responsibility in the statutory health insurance were adopted. Both pieces of legislation took effect on 1 July 1997. The Restructuring Acts improved the efficiency of the social health insurance and its scope for action and also secured its financial bases.

93. The first Act on the restructuring of the statutory health insurance included the following regulations:

- It was made more difficult for the sickness funds to raise their contribution rates because this would lead to an automatic increase in co-payments to be made by the persons insured with the relevant fund;

- Insured persons were given the right to terminate their membership of a sickness fund in case of contribution rate increases;

- Improved hardship regulations for chronically ill persons.

94. The second Act on the restructuring of the statutory health insurance mainly provided for the following measures:

- The self-governing bodies of the sickness funds were given new possibilities to shape the legislation on benefits and contributions (e.g. with regard to the share of costs to be assumed by the insured person himself, a reduction of contributions and contribution refunds) as well as the contents of contracts. In particular, the partners in the self-governing bodies were able to further develop, on their own authority, matters relating to the provision of benefits, namely procedures, structures and forms of financing and remuneration. This was done within the framework of pilot projects, and the existing organizational structures of the self-governing bodies were used to conclude the relevant contracts and handle these projects;

- The regulations on job-sharing for doctors and doctors in part-time employment who provide services as panel doctors met the needs of many doctors who wished to lay down their hours of work individually. They created additional employment opportunities for doctors without increasing the volume of services;

- The amended regulations on planning the demand for contract doctors as from 1999 maintained this planning in the form of a regulation on regional distribution and prevented the introduction of an absolute ban on admissions;

- The in-patient care sector was given more responsibility for securing the financial stability of the statutory health insurance. The reform of the in-patient care sector was continued; this reform, which was initiated in the year 1995 by the Act on Structural Changes in the Health Care Sector and the Ordinance on Per Diem Rates in the Long-term Care Insurance, includes a change from the principle of cost coverage to a performance-oriented remuneration system. For this purpose, the self-governing bodies of the sickness funds and hospitals were given increased possibilities to act on their own authority, and the number of public regulations was reduced. The contracting parties' responsibility for stable contribution rates was put into more concrete and effective terms. As an additional supportive measure, individual provisions of the Ordinance on Per Diem Rates in the Long-term Care Insurance were adjusted for a precisely targeted controlling. Following the repeal of the nursing staff regulation, the contracting parties were again entrusted with the task of developing yardsticks and principles for determining the number of staff required. The legal regulations on the planning requirements for large equipment were also repealed;

- The financing of so-called large-scale maintenance measures in hospitals, which had been an open question since 1993, was regulated temporarily for the period from 1997 to 1999 by means of a lump-sum addition to per diem rates. The additional expenses of the statutory health insurance caused by this measure were meant to be financed by an annual contribution of DM 20 to be paid by the members of the sickness funds from 1997 to 1999. Recipients of low incomes and persons covered by the statutory health insurance in Länder which assume the costs of maintenance measures were exempted;

- In the field of dental care, prevention and conservation were given high priority over dentures, prevention was improved for expectant mothers and small children, and dental prophylaxis was introduced for adults. The percentage subsidy paid by the sickness funds towards dentures was replaced by standardized fixed subsidies towards the individual forms of prosthetic care which were directly paid to the insured person. Accounts were settled directly between the contract dentist and the insured person on the basis of the fee schedule for dentists. For a transitional period of two years - in cases of hardship permanently - the payment that a contract dentist may claim from an insured person was limited to 1.7 times (1.86 times in East Germany) the rates laid down in the fee schedule for dentists;

- Insured persons' rights to be informed about the services charged to the statutory sickness funds and the amounts the funds are required to pay were considerably improved.

95. As from mid-1997, the Acts on the restructuring of the statutory health insurance led to a direct and financially effective relief on the part of the sickness funds.

96. On the basis of a phased concept including immediate savings efforts to be made by the self-governing bodies and the East German Land governments and an increased scope of action for the sickness funds and types of funds concerned, the Act of 24 May 1998 to reinforce the financial bases of the statutory health insurance in East Germany introduced an equalization of risks between the sickness funds for the whole of Germany on a temporary basis, i.e. from 1999 to 2001.

97. Due to increased co-payments, benefit exclusions and "special sacrifices" the Contribution Relief Act and the two Acts on the restructuring of the statutory health insurance imposed an unjustifiable additional burden on insured persons and patients. Above all chronically ill and elderly patients were affected. By means of the Act to reinforce solidarity in the statutory health insurance, the new Federal Government improved the benefits for insured persons as from 1 January 1999 in the following way:

- With effect from 1 January 1999, co-payments for drugs have been reduced from DM 9 to DM 8 for pack sizes N 1, from DM 11 to DM 9 for pack sizes N 2 and from DM 13 to DM 10 for pack sizes N 3;

- Chronically ill persons are completely exempted from co-payments for travel costs, drugs, dressings and appliances if they already had to pay 1 per cent (previously 2 per cent) of their income for the treatment of one and the same disease over the previous year;

- In addition to the reduction of co-payments for drugs and the relief for chronically ill persons, further increases in co-payments which had been envisaged by the previous Federal Government have been abolished:

The Act on Psychotherapists entered into force on 1 January 1999; it was originally intended to introduce a co-payment of DM 10 per session by virtue of this Act; this provision has been repealed;

The so-called dynamization of existing co-payments which, in line with the development of wages and salaries, would have led to further increases in co-payments as from 1 July 1999 in the amount of DM 0.50 per drug prescription, DM 1 per day of hospital stay or curative treatment insofar as they are subject to co-payments, and DM 1 per medical transport, has been dropped;

Furthermore, the mechanism which, in case of contribution rate increases by the individual funds would have led to automatic further increases in co-payments as from the year 2000, has been abolished. If a sickness fund had raised its contribution rate by 1 percentage point, this would have led to increases in co-payments of DM 10 per drug prescription, per day of hospital stay or curative treatment and per medical transport, respectively. In case of appliances, co-payments would have risen from 15 to 25 per cent for the insured persons concerned;

- The so-called "special sacrifice" for hospitals in the amount of DM 20 per member was suspended for the years 1998 and 1999, and then permanently;

- Finally, dentures for insured persons born after 1978 have been reintroduced into the catalogue of benefits that are covered by the statutory health insurance. This ensures that medically necessary dentures will continue to be affordable for the whole of the population.

98. Elements of private insurance which had been incorporated into the system of the statutory health insurance by virtue of the Contribution Relief Act and the two Acts on the restructuring of the statutory health insurance have been repealed by the Act to reinforce solidarity in the statutory health insurance:

- The individual sickness funds had been given the possibility to provide in their statutes for a share of the costs to be assumed by the insured person himself, for contribution refunds, co-payments and an extension of benefits; this has been cancelled;

- At the same time, the possibility for insured persons in general to choose between benefits in kind and a reimbursement of costs has again been restricted to voluntarily insured persons;

- The obligatory introduction of cost reimbursements in case of dentures and orthodontic treatment was repealed. The system of fixed subsidies towards dentures has again been replaced by benefits in kind by the sickness funds. As a rule, insured persons are required to assume 50 per cent of the costs - as under the legislation applicable until mid-1997. A bonus of 10 or 15 per cent is granted in case of regular

dental prophylaxis. Dentists no longer have the possibility to settle their accounts on the basis of the fee schedule for dentists. Dentures-related services are again provided as benefits in kind and remunerated on the basis of fee schedules contractually agreed between dentists and sickness funds.

99. For the major fields of benefits covered by the statutory health insurance, expenses have been limited in 1999.

100. These regulations, which take account of the specific features of the individual fields of benefits, will create the prerequisites necessary to ensure that no contribution rate-increasing effects will come from the statutory health insurance before the entry into force of the structural reform in the year 2000.

2. Long-term care insurance

101. It can be stated that the long-term care insurance, four years after its start and after having overcome some initial difficulties:

- Is working successfully;
- Reliably helps about 1.8 million persons in need of long-term care;
- Strongly reduces the dependence of persons in need of long-term care on social assistance;
- Has improved the care infrastructure;
- Has created about 75,000 new jobs since 1994; and
- Has a sound financial basis.

102. The following points illustrate the positive effects that the long-term care insurance has had on the persons in need of long-term care, their relatives, and on the provision of care in general.

(a) Benefits of the long-term care insurance

103. The benefits of the long-term care insurance reach precisely those whom they are meant to reach in accordance with the legislator's intention. At present, about 1.8 million persons in need of long-term care are in receipt of benefits from the long-term care insurance. In the field of home care, about 1,270,000 persons in need of long-term care are currently in receipt of long-term care allowances of up to DM 1,300 per month or benefits in kind equivalent to a value of up to DM 3,750 per month.

Benefits in the field of home care

| Social long-term care insurance: 1.20 million beneficiaries* (as of 30 June 1998) | |
|---|---|
| Category I<br>DM 400 care allowance or up to DM 750 as benefit in kind | 590 524 (= 49.0%) |
| Category II<br>M 800 care allowance or up to DM 1,800 as benefit in kind | 475 346 (= 39.5%) |
| Category III<br>DM 1,300 care allowance or up to DM 2,800 as benefit in kind, in cases of hardship up to DM 3,750 | 138 241 (= 11.5%) |

* To these add about 63,000 beneficiaries who have compulsory private long-term care insurance (as of 31 December 1997).

104. In the field of institutional care, about 518,000 persons in need of long-term care are currently in receipt of monthly benefits ranging from DM 2,000 to DM 3,300.

Benefits in the field of institutional care

| Social long-term care insurance: 492,000 beneficiaries* (as of 30 June 1998) | |
|---|---|
| Category I<br>DM 2,000 per month | 178 797 (= 36.3%) |
| Category II<br>DM 2,500 per month | 201 282 (= 40.9%) |
| Category III<br>DM 2,800 per month;<br>in cases of hardship<br>up to DM 3,300 per month | 112 095 (= 22.8%) |

* As of 31 December 1997, about 26,000 persons with compulsory private long-term care insurance were in receipt of benefits in the field of institutional care.

(b) Social security of informal carepersons

105. When the long-term care insurance was introduced, informal carepersons were for the first time compulsorily insured in the pension insurance and also covered by the accident insurance scheme. In the field of home care the long-term care insurance pays monthly contributions to the pension insurance ranging from DM 201 to DM 716 (basis 1999). Currently, a total of more than 500,000 carepersons benefit from this regulation. Since over 90 per cent of the carepersons who are subject to compulsory coverage in the pension insurance are women, the long-term care insurance makes an important contribution to the social protection of women in old age.

(c) Long-term care insurance reduces dependence on social assistance

106. The benefits provided by the long-term care insurance have markedly reduced dependence on social assistance in cases where the need for long-term care has arisen.

107. In the field of home care where the funds responsible for social assistance spent only about DM 1.6 billion before the introduction of the long-term care insurance, the benefits provided by that insurance now total about DM 16 billion per year. This means that in the field of home care the vast majority of those in need of care are independent of social assistance.

108. In the field of institutional care where expenditure on social assistance amounted to roughly DM 16 billion per year before the introduction of the long-term care insurance, the latter provides benefits in the amount of roughly DM 14 billion per year. Due to these benefits a large proportion of those in need of institutional care are no longer dependent on social assistance.

(d) Improved care infrastructure

109. Before the introduction of the long-term care insurance, there were considerable deficits in the care infrastructure, above all in the field of home care services and in day and short-term care facilities. In 1991, there were only 100 day care facilities, 220 short-term care facilities and about 4,000 social centres; private care services were still in the process of being established. Four years after the introduction of the long-term care insurance, about 11,900 home care services and more than 6,000 facilities for part-time institutional and short-term care are available for persons in need of care and their relatives.

(e) Sound financing of the long-term care insurance

110. At present the reserves of the social long-term care insurance amount to roughly DM 9.7 billion which include the legally prescribed financial reserve of about DM 4 billion. This financial cushion is the basis for keeping the contribution rate (of 1.7 per cent) stable into the next century, despite slowly increasing numbers of beneficiaries.

3. Pension insurance

111. To inform about the changes that have occurred since the period covered by the third report, the tables contained in paragraphs 189, 190 and 191 are attached as annexes 3 (a)-(c);* the changes are in bold type and underlined.

112. Paragraph 194 of the third report is worded as follows:

> The average pension from an insurance of one's own amounts at present to DM 834 for women in the old Länder and to DM 1,125 for women in the new Länder. The average widow's pension amounts at present to DM 1,036 in the old Länder and to DM 943 in the new Länder.

113. In paragraph 196 (a) the last five sentences are to be deleted. After paragraph 196 (b) the following paragraphs are to be added:

> By virtue of the Pension Reform Act 1999, the valuation of child-raising periods has been gradually increased. Consequently, as from 1 July 2000, child-raising periods will be valued on the basis of the full average income of all insured persons. Furthermore, the Federal Government makes contribution payments for child-raising periods, which are adequate to the tasks performed, as from 1 June 1999. This means that child-raising periods are upgraded to pension periods of a higher quality.
>
> As part of the coming structural reform of the pension scheme it is intended to improve women's old-age security based on their own rights in a way which would include individual choices.

114. In paragraph 197 the figure " 75%" is to be replaced by "90%".

115. Paragraph 198 is to be worded as follows:

> The Long-Term Care Insurance Act is a further step towards a stronger recognition of the informal caregivers'/family members' work. The Act stipulates that pension insurance contributions are to be paid by the long-term care insurance funds which, depending on the care category and the extent of care and nursing (at least 14 hours per week), lie between DM 201 and DM 716 per month.

116. With regard to employment injury benefits (paras. 202-208 of the third report), the following changes occurred in the period under review:

(a) The legislation governing the statutory occupational accident insurance has been redrafted by the Law of 7 August 1996 and incorporated as Book VII into the Social Code. This redrafting did not include a fundamental reform; in particular, the provisions on benefits have remained largely unchanged. The law entered into force on 1 January 1997;

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* Available for consultation with the Committee's secretariat.

(b) The pensions and the nursing allowances payable from the statutory occupational accident insurance were raised as follows:

- From 1 January 1995 by 2.78 per cent in the acceding territory (Pension Adjustment Ordinance dated 12 December 1994);

- From 1 July 1995 by 0.27 per cent and by 2.58 per cent in the acceding territory (Pension Adjustment Ordinance 1995 dated 1 June 1995);

- From 1 January 1996 by 4.34 per cent in the acceding territory (Pension Adjustment Ordinance dated 4 December 1995);

- From 1 July 1996 by 0.47 per cent and by 0.64 per cent in the acceding territory (Pension Adjustment Ordinance 1996 dated June 1996);

- From 1 July 1997 by 1.47 per cent and by 5.27 per cent in the acceding territory (Pension Adjustment Ordinance 1997 dated 10 June 1997);

- From 1 July 1998 by 0.23 per cent and by 0.47 per cent in the acceding territory (Pension Adjustment Ordinance 1998 dated 20 May 1998);

(c) The Occupational Diseases Ordinance has been revised by the Ordinance of 31 October 1997; the new ordinance entered into force on 1 December 1997. The previous list of occupational diseases has been extended by four diseases; these diseases are recognized retroactively in cases where the contingency arose after 31 December 1992.

4. Unemployment benefits

117. The information provided in the third report is updated as follows:

(a) Paragraph 210:

(i) The first sentence should read as follows:

Due to the SGB III Benefits Ordinance 1999 dated 18 December 1998, the maximum income to be used as basis for the assessment of unemployment benefits (article 22 of ILO Convention No. 102) is at present DM 1,980 per week or DM 8,500 per month,

(ii) The last sentence should read as follows:

In 1998, the expenditures for unemployment benefits amounted to roughly DM 52,800 million; in 1995, about DM 48,200 million were spent for this purpose;

(b) Paragraph 212 should be worded as follows:

Unemployment insurance is financed by employer and employee who each pay a contribution of 3.25 per cent of the earnings (sect. 341 (2), sect. 346 (1) SGB III). At present, the maximum earnings to be used as basis for the assessment of contributions amount to DM 1,980 per week or DM 8,500 per month (sect. 341 (4) SGB III);

(c) The last sentence of paragraph 213 should be worded as follows:

Unemployment assistance is granted to unemployed persons who

(a) Are unemployed;

(b) Have registered as unemployed with the employment office;

(c) Are not entitled to unemployment benefits because they have not completed the qualifying period;

(d) Have applied for unemployment assistance;

(e) Within one year preceding their application

(i) Were in receipt of unemployment benefits (follow-up unemployment assistance) or

(ii) Were engaged in employment or completed a period which may establish an entitlement to unemployment benefits as qualifying period - periods of service under public law are equivalent to employment - (primary unemployment assistance);

and

(f) Are in need;

(d) Sentences 3 and 4 of paragraph 215 should read as follows:

Primary unemployment assistance may be granted for a period of 12 months. In 1998, the average amount (net per capita rate) of unemployment assistance was DM 1,010.13 for the old Länder and DM 832.88 for the new Länder. In addition, the compulsory social insurance contributions are assumed;

(e) Paragraph 216 should be worded as follows:

In 1998, the expenditures for unemployment assistance amounted to roughly DM 30,500 million (1985 roughly 9,000 million). The increased expenses on unemployment assistance are largely due to the above-average increase in the number of long-term unemployed persons.

5. Social budget (paras. 219-222 of the third report)

118. The overview of the development of the social budget given in paragraph 220 is updated as follows:

| Year | Social budget (in billion DM ) | GDP[a] (in billion DM ) | Social spending ratio |
|---|---|---|---|
| 1980 | 473.8 | 1 471.5 | 32.2 |
| 1984 | 551.4 | 1 750.9 | 31.5 |
| 1989 | 671.4 | 2 224.4 | 30.2 |
| 1991 | 882.3 | 2 938.0 | 30.0 |
| 1992 | 997.9 | 3 155.2 | 31.6 |
| 1993 | 1 058.0 | 3 235.4 | 32.7 |
| 1994 | 1 107.5 | 3 394.4 | 32.6 |
| 1995 | 1 181.3 | 3 523.8 | 33.5 |
| 1996 | 1 236.3[b] | 3 586.8 | 34.5[b] |
| 1997 | 1 246.9[b] | 3 675.8 | 33.9[b] |
| 1998 | 1 272.1[b] | 3 799.4 | 33.5[b] |

[a] As from 1991 according to European System National Accounts 1995.

[b] Provisional.

119. The overview of the development of the social budget broken down by functions (para. 221) is updated as follows:

| Function | 1980 | 1991 | 1993 | 1995 | 1997[a] | 1998[a] |
|---|---|---|---|---|---|---|
| | in billion DM | | | | | |
| Marriage and family | 71.9 | 118.5 | 139.4 | 149.5 | 172.8 | 174.8 |
| Health | 151.5 | 300.2 | 350.2 | 405.3 | 411.4 | 417.7 |
| Employment | 28.7 | 99.0 | 144.3 | 149.3 | 160.5 | 159.5 |
| Old age and survivors | 188.3 | 330.9 | 382.6 | 430.0 | 455.9 | 470.4 |
| Other functions (consequences of political events, housing, saving/formation of capital, general assistance) | 33.3 | 33.8 | 41.6 | 47.2 | 46.4 | 49.6 |

[a] Provisional.

120. In paragraph 222, the figure to be given for the total expenditures from the 1998 budget of the Federal Ministry of Labour and Social Affairs is DM 154.9 billion (= 33.9 per cent of the total federal budget).

121. In paragraphs 5, third item, and 26 of the concluding observations of the Committee, it is regretted that the third report lacks precise statistics on the number of "social security recipients". Since this statement is made in the context of the poverty problem, the Federal Government assumes that it is not the category of recipients of social security benefits which is meant here but rather that of recipients of social assistance. It will therefore deal with this issue in the context of article 11.

## On article 10 - The right of the family, of mothers and of children and of young persons to assistance

### 1. The family concept

122. Paragraphs 229 and 230 of the third report should be worded as follows:

> The forms of families have changed and will continue to change. Therefore we encounter very different family forms today. This is not surprising against the background of the economic, cultural and political changes, but rather a normal part of the continuous change of society in general. Today families comprise married and unmarried parents who raise their children together or alone including stepparents, adoptive parents and foster-parents.
>
> One feature which all these long-term relationships have in common is the reliable relationship between the children and their parents. They all have the same right to protection and assistance even if they do not succeed in living together as a family.

### 2. Equalization of family burdens

123. Because of the fundamental reform of the equalization of family burdens, the regulations to be applied as from 1 July 1999 are described in their context (cf. paras. 234-260 of the third report).

#### (a) Child benefits

124. Child benefits are payable for all children under 18. For children undergoing training child benefits are payable until they complete age 27, for children who are unemployed until they complete age 21. If military or civilian service is performed during this time the upper age limit is extended accordingly. There is no age limit for children who, because of a disability, are unable to support themselves. No child benefits are payable for children over 18 if the child has own income of more than DM 13,020 per year.

125. Child benefits are paid regardless of income in the form of a monthly tax refund. In certain cases parents not fully liable to taxation receive child benefits in the form of monthly social compensation payments. Child benefits are graded according to the number of children and are paid at the following rates as from 1 January 1999:

| | |
|---|---|
| For the first and second child | DM 250 per month |
| For the third child | DM 300 per month |
| For the fourth and each further child | DM 350 per month |

(b) Statutory health insurance

126. The statutory health insurance, which covers about 90 per cent of the population of the Federal Republic of Germany, provides in general non-contributory insurance coverage for the spouses and the children of insured persons. This is an autonomous insurance coverage for family members without contribution payments. Except for wage replacement benefits family members are entitled to largely the same benefits as the insured persons themselves.

(c) Child-raising allowance

127. Mothers and fathers who look after their newborn child themselves receive a child-raising benefit of up to DM 600 per month for the first 24 months. While receiving this allowance they may work for up to 19 hours per week.

128. The child-raising benefit is a means-tested benefit. Until the child is six months old the full amount of the child-raising benefit is paid if the annual net income is lower than DM 100,000 in the case of couples and DM 75,000 in the case of single parents. Parents with an income above this limit do not receive child benefit at all. If the annual income exceeds DM 29,400 in the case of couples and DM 23,700 in the case of single parents the child benefit is gradually reduced from the seventh month onwards. For the second and each further child, this income ceiling is raised by DM 4,200 each. The maternity benefits payable to working women are taken into account in the calculation of the child-raising benefit.

(d) Child-raising leave

129. Both male and female employees are entitled to child-raising leave of up to 36 months to look after their newborn child. The parents may alternate three times over this period.

(e) Maternity benefit, employer's subsidy

130. During the statutory rest periods - six weeks before and normally eight weeks after the birth of a child - working mothers receive maternity benefits. Mothers who are members of the statutory health insurance receive up to DM 25 per day. The difference between DM 25 per day and the previous average net earnings is paid by the employer. The difference is also payable to working mothers who have no private health insurance coverage. In addition, they receive a lump-sum maternity benefit of DM 400.

(f) Maintenance advance

131. The maintenance advance fund helps single mothers and fathers in cases where the other parent fails to pay maintenance for the child.

| Maintenance advance (as from 1 July 1999) | Children under 6 | Children from 6 to under 12 |
|---|---|---|
| In the old Länder | DM 230 per month | DM 306 per month |
| In the new Länder | DM 199 per month | DM 267 per month |

132. Maintenance advance is paid for a maximum period of 72 months but only for children under 12 years of age. If possible, the State recovers the maintenance advance benefits from the parent who is obliged to provide maintenance.

(g) Maintenance for children

133. Parents are obliged to provide for the maintenance of their children. Maintenance for children who live in the household of their married parents (which is true for 85 per cent of all children under age in Germany) is mainly provided by services in kind. In addition the following rules apply: the parent in whose care a minor unmarried child is normally meets the obligation to provide for the child's maintenance by looking after and raising the child whereas the other parent has to cover the material needs of the child.

134. Up until 30 June 1999 the standard rates under maintenance law which serve as reference figures for the maintenance payments to children under age which are calculated on a case-by-case basis and are graded by age groups (0-5 years/6-11 years, 12-17 years) amounted to DM 349/DM 424/DM 502 in the old Länder and to DM 314/DM 380/DM 451 in the new Länder and in the eastern part of Berlin. Since 1 July 1999 the standard rates are DM 355/DM 431/DM 510 in the old Länder and to DM 324/DM 392/DM 465 in the new Länder and in the eastern part of Berlin. The law provides that the standard rates and the maintenance payments linked to these rates have to be adjusted to the net wage development on 1 July of every second year.

3. Homosexual couples

135. In addition to the reply to question 28 of document E/C.12/Q/GER.1 the following information is provided.

136. The coalition agreement between the Social Democratic Party of Germany and Alliance 90/The Greens of 20 October 1998 contains the following statements concerning the legal aspects of lasting and especially homosexual relationships:

> "We believe that all forms of lasting relationships have a right to protection and legal safeguards.
>
> "The new Federal Government intends to protect minorities and achieve equal rights and social integration for them. No one may be discriminated against on the grounds of his or

her disability, origin, skin colour, membership of an ethnic group or sexual orientation as gay or lesbian. To this end, we shall initiate a law against discrimination and for the promotion of equality of treatment (inter alia by introducing the legal institution of registered partnerships with rights and responsibilities). Account will be taken of the European Parliament's recommendations on the equal rights of lesbians and gays."

4. The issue of dual nationality

137. In addition to the reply to question 27 of document E/C.12/Q/GER.1 and in view of paragraph 8, second item, of the concluding observations of the Committee, the following information is provided.

138. The applicable German nationality legislation is based on the principle of descent - ius sanguinis. This means that a child has German nationality by birth if at least one parent is a German national (section 4 (1) of the Nationality Act). In this context it is not relevant whether the parents or the parent are German nationals by descent or by way of naturalization. After an amendment of the law in 1993 it does not make a difference any more whether the child is legitimate or not. However, in cases where only the father is a German national and the parents are not married, German nationality can be claimed only if paternity was effectively acknowledged or established under German law within a specified period (section 4 (1), second sentence, of the Nationality Act).

139. Besides the acquisition of German nationality by descent there is the possibility for children of foreign parents as well as for foreign adults to become naturalized if they meet the legal requirements. Here it has to be pointed out that children under age can be naturalized under eased conditions in the wake of the naturalization of one or both parents (section 8 of the Nationality Act in conjunction with para. 3.2.2.5 of the naturalization guidelines as well as section 86 (2) of the Aliens Act).

140. In addition, children of foreign parents can be naturalized independently on different legal bases. There is, on the one hand, the possibility of naturalization by a discretionary decision of the competent administrative authority if the legal requirements are met (section 8 of the Nationality Act). On the other hand, young foreigners have a special entitlement to naturalization under eased conditions if they meet the legal requirements (section 85 of the Aliens Act).

141. A child who is stateless from birth has to be naturalized upon application if (in brief) it has been born in the territory of the Federal Republic of Germany, if it has lawfully and permanently resided on German territory for five years, if it applies for citizenship before age 23 and has not been finally sentenced to a term of imprisonment or youth custody of five years or more (cf. article 2 of the Implementing Act to the Convention on the Reduction of Statelessness of 30 August 1961 and to the Convention on the reduction of the number of cases of statelessness of 13 September 1973 (Act on the Reduction of Statelessness dated 29 June 1977)).

142. Beyond these regulations the Act to reform nationality legislation dated 15 July 1999 inter alia substantially improved the acquisition of German citizenship by foreign children. To further the integration of children of foreign parents born in Germany, a ius soli component was

added to the traditional principle of descent under which only children of German parents became German nationals and which was hardly able to contribute to the integration of the foreign population. As from 1 January 2000 children of foreign parents born in Germany will be German nationals by birth. The legal requirement for this is that one parent has ordinarily resided in Germany for eight years and has a right of unlimited residence or, for the last three years, an unlimited residence permit. If children of foreign parents have not only German nationality but also that of another country, they have to choose between the German and the foreign nationality once they are of age (option). In addition, a naturalization claim was introduced for a limited period of time for children under 10 who were born before this Act entered into force and who, at birth, would have met the requirements for a ius soli naturalization. For all foreigners the minimum period of residence required to establish a naturalization claim was lowered from 15 to 8 years.

5. Violence against women and sexual abuse of children (paras. 20/21 and 34 of the concluding observations)

143. In addition to Part I of the reply to question 30 of document E/C.12/Q/GER.1 the following information is provided.

144. In 1999 the Federal Government will prepare a first national action plan to fight violence against women in Germany. This action plan will focus on the following priorities:

- Prevention;
- Further improvements of Federal legislation;
- Institutionalization of the necessary cooperation;
- The nationwide networking of assistance services;
- Work with offenders;
- Awareness-raising among experts and the general public;
- The fight against violence in an international dimension.

145. Regarding paragraph 20 of the concluding observations, it has to be mentioned that as from 1 January 1998, the preliminary investigations by the public prosecutor record whether the investigations concern:

- Special economic offences;
- Cases involving narcotics;
- Environmental offences;

- Cases involving sexual self-determination;

- Road traffic offences;

- None of the above-mentioned offences.

In addition, it is recorded whether the case involves organized crime.

146. Statistical information concerning trafficking in human beings is given in the extract of a reply of the Federal Government of 7 April 1998 to a parliamentary question which is attached as annex 4.*

147. In addition to Part III of the reply to question 30 of document E/C.12/Q/GER.1 the following information is provided.

148. Further improvements were introduced by the Act on the protection of witnesses (Zeugenschutzgesetz) which took effect on 1 December 1998. This Act for the first time regulates the use of video technology in criminal proceedings. The purpose is to help witnesses who need special protection, which include in particular children and women who fell victims of sexual offences. Under certain conditions the hearing of witnesses may take place separately from the other parties to the lawsuit and be recorded by audio-video technology. The recordings of the judicial examination may later be used in lieu of an interrogation if further requirements are met which are designed to protect the justified interests of the other parties to the lawsuit - in particular also those of the accused. This shall help to avoid the multiple examinations which are particularly burdensome for victims of sexual offences and for young victims and witnesses. The separate examinations which are transmitted by video technology to the other parties of the lawsuit also help these groups of witnesses since they are spared the often oppressive atmosphere in the courtroom and the confrontation with their tormentors.

149. Moreover, the Act on the protection of witnesses again extends the possibilities for crime victims to obtain legal counsel. Now the victim as a joint plaintiff has a right to be provided, upon request, with a lawyer as legal counsel regardless of his economic situation if the case involves a crime against sexual self-determination or life or trafficking in human beings. If the victim is under 16 this extends even to offences and to abuse of wards.

150. As regards paragraphs 21 and 34 of the concluding observations, attention is drawn to the following.

151. At present additional measures in the field of criminal law are under consideration to combat sexual abuse of children and the dissemination of child pornography publications. For example:

- The possible introduction of the offence under which it is punishable to promise to provide information about a child for acts of sexual abuse;

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* Available for consultation from the Committee's secretariat.

- A possible extension of the offence of possessing and disseminating child pornography publications to publications which involve the sexual abuse of young persons under 16.

6. Protection of young persons in employment/child labour (para. 33 of the concluding observations)

152. It was not without surprise that the Federal Government noted the Committee's request to take effective measures to regulate child labour, in compliance with the Covenant and the relevant ILO Conventions.

153. The only relevant ILO Convention which applies to Germany is Convention No. 138 which was ratified in 1976; the other relevant Conventions (Nos. 5, 6, 7, 10, 15, 33, 58, 59, 60, 112 and 123) were either not ratified by Germany or automatically ceased to have effect with the ratification of Convention No. 138.

154. Since the submission of the first German report in 1978 the ILO Committee of Experts on the Application of Conventions and Recommendations never saw a cause for observations concerning the application of Convention No. 138 by Germany. In several direct requests it had asked for detailed information on individual points. The last direct request of the Committee of Experts dates back to the year 1997 and concerns details about the Act to Amend the Act to Protect Young Persons at Work which had entered into force on 1 March 1997 (that is after the submission of the last German report on Convention No. 138). Moreover this direct request inquires about a reply of the Federal Government to a parliamentary question of 1992 which refers, inter alia, to the number of inspections to supervise the protection of young persons at work. In its next report on the application of the Convention the Federal Government will provide the information requested in this direct request.

155. It is well known that the ILO Committee of Experts expresses infringements of ratified Conventions in the form of observations (and not in the form of direct requests). Since, as pointed out above, there were no observations about the application of Convention No. 138 by Germany, the Federal Government sees no ground for bringing the German legislation concerning the protection of young persons at work into line with the Convention.

156. The request of the Committee in paragraph 33 to bring the domestic legal situation into line with the Covenant is not understandable since the concluding observations do not specify concrete points where the domestic legal situation conflicts with the Covenant.

157. Finally, the following information is provided in addition to the reply to question 19 of document E/C.12/Q/GER.1.

158. In Germany the Second Act to Amend the Act to Protect Young Persons at Work of 24 February 1997 extended the general prohibition of child labour to include young persons up to age 15. Exemptions for children under 13 are only possible with the approval of the supervisory authority and only in a few exceptional cases such as participation in theatre or musical performances and radio and television recordings. Moreover, employment of children over 13 is only permissible if the work is easy and suited for children. In order to define more

precisely what is meant by easy work which is suited for children, the Federal Government issued the Ordinance to Protect Children at Work dated 23 June 1998. This Ordinance permits customary and socially recognized work such as the delivery of newspapers and magazines, help in private households, errands and shopping, baby-sitting, private tuition, assistance in sports and help in agriculture. Children over 13 and young persons subject to compulsory full-time schooling are allowed to perform such activities as follows:

- Not more than two hours per day, on the family farm not more than three hours per day;
- Not between 6 p.m. and 8 a.m.;
- Not before school starts and not during school hours;
- Not more than five days a week;
- No hazardous work, e.g. with hazardous substances or biological agents;
- No piece-work or speed-related work.

159. Employment in industry, in production processes and in commerce is not permissible either.

On article 11 - The right to an adequate standard of living

1. Poverty line or threshold and indicators of changing living standards (para. 15 of the concluding observations)

160. In its reply to question 32 of document E/C.12/Q/GER.1, the Federal Government described in detail the conceptual and methodological difficulties which in its opinion would be encountered in defining or measuring poverty and in setting a poverty threshold. It regrets that the Committee has not taken its explanation into consideration and has simply requested that a poverty threshold should be established. The Federal Government once again refers expressly to the reply given to question 32. Because of the reservations and difficulties described in this reply, Germany does not have an officially established poverty threshold from which the numbers of poor people or people liable to lapse into poverty can be deduced. This is not an impediment to the Federal Government's stated intention, as outlined in the coalition agreement of 20 October 1998, to draw up regular reports on poverty and prosperity.

161. As in the third periodic report, a few statistics which are generally considered as indicative of trends in living standards are included hereunder:

Gross national product per inhabitant (in DM)

| | |
|---|---|
| 1994 (provisional) | 40,777 |
| 1998 (provisional) | 44,105 |

Disposable income of private households per inhabitant (in DM)
1994 (provisional) 26,489
1998 (provisional) 28,566

Private consumption per inhabitant (in DM)
1994 (provisional) 23,409
1998 (provisional) 25,446

Cost of living index (1991 = 100)

| Year | 1994 | 1998 |
|---|---|---|
| All private households | 110.5 | 116.1 |
| Four-person household of salaried employees and civil servants in the higher income brackets | 110.7 | 116.6 |
| Four-person household of workers in the middle income brackets | 111.0 | 116.6 |
| Two-person household of pension and social assistance recipients | 111.4 | 118.2 |

2. Social assistance

162. As stated in the chapter on article 9, the Federal Government considers that the expression "social security recipients" in paragraph 5, subparagraph 3, and in paragraph 26 of the concluding observations refers to beneficiaries of social assistance.

(a) Preliminary remark

163. For certain data, a time-series comparison with the information presented in the third periodic report (paras. 275 to 283) is not possible, and in other cases the data are only partially comparable owing to the time which has elapsed. This is due to the implementation since 1994 of the measures described below.

164. The reform of the social assistance statistics system carried out using 1994 as a base year modified the former system, which had been a simple census-based system. The approach favoured by end-users of collecting and presenting figures depicting trends over the years covered was discarded in favour of the collection and publication of figures providing information on current benefits at year-end, broken down according to numerous characteristics. At nearly the same time, on 1 November 1993, the Act on Benefits for Asylum Seekers (Asylbewerberleistungsgesetz) entered into force. Since then, asylum seekers, foreigners whose expulsion from German territory has been stayed and foreigners required to leave German

territory under an enforceable decision have no longer been entitled to subsistence benefits under the Federal Social Assistance Act (Bundessozialhilfegesetz-BSHG), and have instead received benefits under the Act on Benefits for Asylum Seekers. This group of foreigners is the subject of separate statistics covering benefits given to asylum seekers, which have been compiled since 1994. Such persons are therefore no longer included in the statistics on social assistance benefits.

165. The entry into force of the Long-term Care Insurance Act (Pflegeversicherungsgesetz) has made outpatient care available for dependants as from 1 April 1995 and inpatient care as from 1 July 1996. Such care partially replaces the assistance to persons dependent on long-term care (assistance in special circumstances) previously provided under the Federal Social Assistance Act; it has thus helped to reduce spending on, and the number of beneficiaries of, such assistance.

(b) Social assistance expenditure

166. In 1997 total expenditure for social assistance came to DM 44.5 billion, of which DM 39 billion was for the former Federal territory and DM 5.5 billion for the new Länder and East Berlin. There has thus been a decline in social assistance expenditure for the second straight time since the entry into force of the Federal Social Assistance Act. This fresh decline is mainly attributable to the assumption of part of the burden by the Long-term Care Insurance scheme which was for the first time in effect throughout the year both for outpatient care (as from 1 April 1995) and for inpatient care (as from 1 July 1996), but also to a levelling-off of the normal rates for social assistance benefits (article 22, paragraph 6, of the BSHG) and the daily rates for inpatient care (article 93, paragraph 6, of the BSHG).

167. As a proportion of all benefits funded by the social budget, social assistance benefits represented 2.8 per cent in 1980 (in the former Federal territory). By 1997 the proportion had risen to 3.5 per cent (for all of Germany).

168. The figures cited are gross expenditures. In order to assess the actual burden imposed on the budgets of the public authorities by social assistance, "net" expenditure must be considered, i.e., that remaining after the income of the social assistance institutions is deducted. This income comes from the amounts reimbursed by other institutions providing social benefits (8.2 per cent of gross expenditure in 1997) and from co-payments and deductibles payable by beneficiaries or their family members (2.4 per cent in 1997). In 1997 the total income of social assistance institutions in Germany came to 13.2 per cent of gross expenditure, or 12.6 per cent in the former Federal territory and 17.2 per cent in the new Länder. Hence net expenditure by social assistance institutions in 1997 amounted to DM 38.7 billion, of which DM 34.1 billion was for the former Federal territory and DM 4.6 billion for the new Länder.

169. Social assistance in the narrower meaning, i.e. benefits to help cover living costs (Hilfe zum Lebensunterhalt), in 1997 amounted to DM 20.2 billion (gross expenditure), or just 45 per cent of disbursements. The larger share of expenditure, representing DM 24.3 billion, or 55 per cent, consisted of assistance in special circumstances (Hilfe in besonderen Lebenslagen), which comprised integration assistance for disabled persons, with DM 14.7 billion (or 33.1 per cent), assistance for persons in need of long-term care (Hilfe zur Pflege), with

DM 6.8 billion (or 15.4 per cent) and, to a considerably lesser extent, by assistance during sickness (Krankenhilfe), with DM 2.2 billion (or 4.9 per cent). During the same year, other types of assistance amounted to just DM 579 million (or 1.3 per cent).

170. The financing of social assistance is regulated by the Länder. Benefits handled by the local social assistance funds (the gross expenditure of which in 1997 amounted to DM 22.8 billion, mainly assistance to help cover living costs) are paid by the community authorities; they are financed from their revenue, including their share of various taxes, the land and local business taxes and the allocations received in respect of revenue equalization between communities. Benefits handled by the regional funds (the major share of the assistance in special circumstances, amounting in 1997 to DM 21.7 billion) are partly financed by the Länder and partly by the communities - the regulations vary between the different Länder.

171. Expenditure under the Act on Benefits for Asylum Seekers came to DM 5.2 billion.

(c) Number of social assistance beneficiaries

172. In comparison with 1996, there has been an increase of 7.6 per cent, to 2.89 million, in the number of recipients of regular assistance to help cover living costs who are not living in a home or institution. In the former Federal territory, 2.5 million persons not living in a home or institution received such benefits, and in the new Länder and East Berlin the number was approximately 382,000. They represented 3.8 per cent of the population living in the former Federal territory and 2.5 per cent in the new Länder and East Berlin.

173. At the end of 1997, 949,373 people were receiving assistance for persons in special circumstances, including nearly 500,000 living in homes or institutions and nearly 460,000 living elsewhere. In 1997 the main beneficiaries were recipients of integration assistance for disabled persons (38 per cent of those paid such assistance) and recipients of assistance for persons in need of long-term care (26 per cent).

174. The number of persons receiving benefits under the Act on Benefits for Asylum Seekers came to 487,000 (429,000 in the old Länder and 58,000 in the new Länder).

(d) Support for access to employment

175. The various measures to facilitate access to employment (Hilfe zur Arbeit) available under the Federal Social Assistance Act are the responsibility of the 439 local social assistance funds, which carry out the measures themselves. The only official data available on such measures consist of information on expenditure provided by the Länder. In order to specify the types of measures and the numbers of beneficiaries, a survey of all 439 local social assistance funds would have to be carried out. That would not be feasible given time constraints and the financial and human resources available. What is more, the social assistance funds have no obligation to report to the Federal Government.

176. In 1993 and 1996 the Association of German Cities (Deutscher Städtetag) carried out surveys of its membership on measures taken to support access to employment. In 1993, 178 cities reported roughly 24,000 jobs on offer as part of such measures, and

in 1996 some 55,000 such jobs were reported in 186 cities. Extrapolating to the entire population, the Association estimates that throughout the country some 150,000 jobs were made available in 1996 under employment access support measures. In order to make a valid comparison between the Association's two surveys, which had varying participation rates, the average number of job opportunities per city is shown below. This average value increased by 120 per cent, from 133 jobs per city in 1993 to 293 in 1996.

Job opportunities offered under articles 19 and 20 of the BSHG in cities belonging to the Association of German Cities (1993 and 1996)

| Job opportunities | 1993 (178 cities) | | | 1996 (186 cities) | | | Variation |
|---|---|---|---|---|---|---|---|
| | Number | Per cent | Average per city | Number | Per cent | Average per city | 1996 in comparison with 1993 (average) in per cent |
| Under art. 19, para. 1 | 1 900 | 8 | 10.7 | 13 090 | 24 | 70.4 | 559 |
| Under art. 19, para. 2, 1st alternative | 11 610 | 49 | 65.2 | 18 550 | 34 | 99.7 | 53 |
| Under art. 12, para. 2, 2nd alternative | 8 290 | 35 | 46.6 | 20 190 | 37 | 108.5 | 133 |
| Under art. 20 | 1 660 | 7 | 9.3 | 2 730 | 5 | 14.7 | 57 |
| Total | 23 690 | 100 | 133.1 | 54 560 | 100 | 293.3 | 120 |

177. Spending on regular assistance with living costs in the form of employment access support amounted to the following sums (in millions of DM, and expressed as a proportion of the total outlays on such benefits):

| | | |
|---|---|---|
| 1995 | 1 057.4 | (5.6%) |
| 1996 | 1 304.4 | (6.7%) |
| 1997 | 1 493.7 | (7.4%) |

(e) Causes of the need for social assistance benefits

(i) Causes of the need for assistance with living costs

178. Until 1993, the official social assistance statistics treated unemployment as one of many causes (including illness, death or lack of family support and insufficient insurance or survivor's benefits). The new structure adopted for social assistance statistics as from 1994 takes into account the fact that unemployment may go hand in hand with other factors which give rise to difficulties. Consequently, the more recent statistics indicate, on the one hand, the employment situation of the beneficiary and, on the other hand, social problems such as separation or divorce, excessive debt or homelessness. It is thus possible to detect situations involving complex problems, whereas previously it had only been possible to identify the main reason for the granting of assistance. However, it is no longer possible seamlessly to compare the data with those collected until 1993.

179. In Germany, 40 per cent of working-age beneficiaries (those from 15 to 65) are registered as unemployed (approximately 700,000 persons).

180. The risk of long-term unemployment depends to a great extent on age: the average duration of unemployment among beneficiaries increases gradually with their age group. The average period of unemployment is 21 months for persons from 25 to 29, 25 months for those from 30 to 39, 31 months for people from 40 to 49 and reaches 40 months for beneficiaries between 50 and 59. Persons requiring supplementary assistance with living costs because of insufficient income from employment represent a much smaller proportion of the beneficiaries of this kind of assistance (7.7 per cent for the entire country).

(ii) Special social circumstances

181. About 21 per cent of the recipients of regular assistance with living costs are in "special social circumstances", while the situation of the other 79 per cent cannot be defined by such characteristics (this figure may also include beneficiaries for whom such information is not known). Hence social assistance principally takes account of the consequences of a change in the family situation, such as separation/divorce, the birth of a child or possibly the institutionalization or death of a family member.

- In the former Federal territory, it is mainly separation and divorce which give rise to special social circumstances for the persons in question. German beneficiaries are more affected than foreign ones. Other less significant causes include the birth of a child, death of a family member or homelessness;

- In the new Länder and East Berlin, the order of importance of the various causes is different: there, the birth of a child is most important (in particular considering the higher proportion of single parents), followed by separation and divorce. The problem of homelessness is more prevalent there than in the former Federal territory;

- The death or institutionalization of a family member creates insurmountable difficulties above all for foreign families.

3. The right to adequate housing

182. In reply to paragraph 24 of the concluding observations, the following additional information is provided.

183. Housing in Germany is generally good, both quantitatively and qualitatively. However, in the first half of the 1990s there was - mainly owing to the high number of new arrivals - a considerable housing shortage; to mention just one category, between 1988 and 1998, 2.5 million persons of German origin arrived from the countries of Central and Eastern Europe (including 415,000 between 1996 and 1998). The resulting difficulties in the housing market have to a great extent been overcome. Housing construction has risen considerably as the public authorities have supported it with incentives. The number of newly constructed housing units rose from 313,000 in 1988 to 603,000 in 1995. In the years from 1996 to 1998, thanks to a new

surge in construction, about 1.65 million units were completed. Floor space per person rose between 1990 and 1997 to an average of nearly 40 square meters in the old Länder and nearly 34 square meters in the new ones.

184. Although the housing situation is generally good, some households cannot on their own afford adequate housing, above all because of low income. It is this population category which is now the target of heightened incentives. The main tools used for this purpose are low-rental housing (construction of new buildings and renovation of existing ones) and housing subsidies. As regards housing policy, reference is made to the presentation in the third periodic report (para. 310) and the reply to question 22 of document E/C.12/Q/GER.1.

185. Thanks to the increase in housing supply, the number of homeless families has declined considerably, as is reflected in the statistics available. There are currently no statistics covering the entire country; the Federal Government is working with the Länder to broaden the collection of the relevant data.

186. For certain Länder, statistics covering long periods are sometimes available. For example, in North Rhine-Westphalia (the most heavily populated Land, with 17.9 million inhabitants), every year on 30 June a census is taken of persons housed in emergency shelters. For the most part these are persons who have lost their homes following a judicial decision (for example, owing to a failure to pay rent or because of problems with their neighbours). However, they also include persons who have had to leave their homes because of renovation work, or whose homes have been destroyed by accident (fire, for example). The number of such persons rose from 37,882 on 30 June 1988 to 62,396 on 30 June 1994, and subsequently fell, reaching 36,063 on 30 June 1998.

187. Generally, housing in emergency shelters is intended only for short periods. The community authorities try to provide the individuals and families concerned with a normal housing unit as quickly as possible, or attempt to prevent the loss of the home either by covering the rent due or by granting other social assistance (such as aid in overcoming debts).

188. Associations which assist the homeless to consider that the number of homeless people is declining. The Federal Association for Help to the Homeless (Bundesarbeitsgemeinschaft (BAG) Wohnungslosenhilfe) has estimated that the total number of homeless people stood at about 860,000 in 1997 and 690,000 in 1998.

189. In considering these figures, it must be noted that the estimates by the Federal Association for Help to the Homeless are not consistent with the available statistics. They do not relate to a given day but to changes over an entire year, and they encompass broad categories, namely all individuals who at any time during the year lacked a home of their own with the lease in their own name. This includes people living in the street (according to the Association, approximately 35,000 people over the course of 1997 and about 31,000 in 1998); persons housed in emergency shelters; but also people of German origin (see above) who, for the first few weeks or months after their arrival are housed at reception centres while they find homes of their own.

190. Germany attaches much importance to preventing and countering homelessness. Article 20, paragraph 1, of the Basic Law, effectively offers protection for disadvantaged

persons: it requires the public authorities to take preventive measures and to assist individuals and groups in society who, owing to the circumstances in which they live or because of the disadvantages to which they are subjected, are prevented from developing as individuals or as members of society, such as the so-called marginalized groups. This principle of the social State underpins the social assistance legislation, under which the public authorities assist persons and households that are unable to meet their basic needs either by themselves or with help, from other people or from the social welfare schemes, which provide the first recourse. It is incumbent upon social assistance, as beneficiaries' last resort, to ensure they can live with dignity.

191. The Federal Social Assistance Act (BSHG) therefore provides various forms of assistance for the homeless and for those threatened with homelessness. For example, assistance with living costs (article 11 and following of the BSHG) provides the needy with the means to maintain their housing in suitable condition. In addition, article 15 (a) of the BSHG presents a set of norms of particular importance in preventing and countering homelessness. Under this article, the social assistance fund must cover the rent due from the moment when, failing such assistance, people would be liable to find themselves homeless. Article 15 (a) of the BSHG also requires courts hearing eviction cases based on late payment of rent under article 554 of the Civil Code to inform the local social assistance funds, so that they may take preventive action in time. Furthermore, persons unable by their own means to overcome obstacles to their participation in community life are entitled under article 72 of the BSHG to assistance covering any action required to prevent and overcome the obstacles or attenuate their effects, notably individual advice and assistance and help with maintaining their housing or finding a new home.

192. Squatting is very rare. In the early 1990s some dilapidated buildings in the older districts of the new Länder were squatted, mainly out of fear that low-income inhabitants might be evicted following a change of ownership or renovation of the buildings. Since then, many buildings in the older districts have been renovated thanks to generous subsidies, without such fears being substantiated. This is due in part to the very effective provisions of the housing subsidy measures applicable in the new Länder.

193. Overall, the housing stock in the new Länder had many "inherited" defects that needed to be remedied: dilapidated dwellings (more than half of all housing dated from before 1948) which had not been properly maintained or kept up; new buildings in unattractive projects with inadequate facilities and services; and a suppressed ownership structure. Since reunification, the quality of housing and residential neighbourhoods has been transformed.

194. Regarding paragraph 28 of the concluding observations, it should be noted that by its very nature the right to adequate housing as provided under article 11 of the Covenant and persuasively set out in General Comment No. 4 of the Committee refers to adequate housing for the population residing indefinitely or at least for an extended period in a State party to the Covenant. As for housing arrangements designed and equipped only for temporary accommodation (such as emergency shelters for disaster victims), the principles enumerated in General Comment No. 4 can only apply to them in a limited manner, if at all.

195. Similarly, collective reception centres for asylum-seekers do not offer permanent accommodation but merely meet the need for temporary shelter. Consequently, asylum-seekers must accept the inconveniences which typically come with a stay in collective reception centres. This point has been confirmed by German constitutional case law.

### 4. Act on Benefits for Asylum-Seekers (Asylbewerberleistungsgesetz)

196. To further elucidate the presentation in the third periodic report (para. 293) and in the light of paragraphs 17 and 28 of the concluding observations, the following information is provided.

197. The Federal Social Assistance Act is no longer applicable to asylum-seekers and other foreign refugees who do not have consolidated resident status in the Federal Republic of Germany. Such persons now receive benefits under the Act on Benefits for Asylum-Seekers, which came into force on 1 November 1993 and was amended on 26 May 1997, and again on 25 August 1998. To meet their needs and provide them with food, housing, heat, clothing, health-care items, toiletries, convenience goods and consumer durables, they are supposed, for their first three years in Germany, to receive benefits in kind. Only when they cannot be provided in kind may cash benefits be disbursed. These benefits are about 20 per cent lower than the normal rates for social assistance benefits, since such people concerned do not need benefits designed to permit their integration into German society, their stay in the Federal Republic being only temporary. To help meet their personal everyday needs, all persons entitled to benefits also receive DM 80 per month, or DM 40 per month for children under 14.

198. The Act on Benefits for Asylum-Seekers gives priority to benefits in kind so as to ensure that the benefits provided are actually used to meet the needs that the Act addresses. Granting benefits in kind instead of cash ensures that beneficiaries under the Act cannot use them to support people they have left behind in their countries of origin or to pay smugglers while themselves being left without sustenance. Furthermore, granting non-cash benefits makes Germany less attractive to refugees not subject to political, racial or religious persecution.

199. In the event of illness, pregnancy or birth, the requisite medical assistance is provided.

200. After receiving benefits for three years, persons covered by the Act begin to receive benefits corresponding to social assistance if they cannot leave Germany or if measures intended to end their stay cannot be executed for humanitarian, legal or personal reasons or for reasons of public policy.

201. Foreigners entering Germany in order to receive benefits who are required to leave the country under an enforceable decision, or who cannot be expelled for reasons of their own making (for example, those who destroy their passports or conceal their identity) are awarded only those benefits appropriate to their individual cases.

202. There is no reason for the Committee to be concerned about the economic rights and the right to health of asylum-seekers during the examination of their applications for asylum. As noted above, their subsistence is ensured during the examination procedure and they are provided with medical assistance.

On article 12 - The right to health

1. Health expenditure

203. The third periodic report mentioned the "health care spending ratio", or health expenditure as a proportion of gross domestic product, and the share of health expenditure as a proportion of the social budget (para. 318). For the period from 1994 to 1997, these figures are as follows:

| | 1994 | 1995 | 1996 | 1997 |
|---|---|---|---|---|
| Health care spending ratio (health expenditure/GDP, per cent) | 11.2 | 11.7 | 11.9 | 11.5 |
| Proportion of health expenditure in the social budget (per cent) | 33.7 | 34.5 | 34.1 | 33.3 |

2. Infant and maternal mortality

204. The table in paragraph 319 of the third periodic report is updated as follows:

Infant and maternal mortality rates - developments from 1993 to 1995

| Year | Infant mortality rate (per 1 000 live births) | | Maternal mortality rate (per 100 000 live births) | |
|---|---|---|---|---|
| | Former Federal territory | New Länder and East Berlin | Former Federal territory | New Länder and East Berlin |
| 1993 | 5.8 | 6.3 | 5.3 | 7.5 |
| 1994 | 5.5 | 6.2 | 5.2 | 5.1 |
| 1995 | 5.3 | 5.5 | 4.7 | 10.7 |

205. In the period from 1993 to 1995, in the former Federal territory life expectancy at birth averaged 73.53 years for men and 79.81 years for women. In the new Länder and East Berlin it stood at 70.72 years for men and 78.16 years for women.

3. HIV/AIDS

206. As a complement to the explanations given in paragraph 328 of the third periodic report and with reference to paragraphs 5.4, 23 and 35 of the concluding observations, the following information is provided.

207. The following table is based upon a synoptic presentation and extrapolation of epidemiological data on HIV and AIDS, provided by the Robert Koch Institute at the end of June 1999:

| HIV infections: | | AIDS cases: | |
|---|---|---|---|
| Total number of persons infected since the beginning of the epidemic (estimate) | 50,000-60,000 | Coverage: | >85% |
| | | Total number of cases reported since 1982: | 18,239 |
| | | Including number of deaths reported: | 11,658 |
| Breakdown by sex: | | Breakdown by sex: | |
| Men | ~80% | Men | 88% |
| Women | ~20% | Women | 12% |
| Number of children under 13: (1%) | ~500 | Children under 13: (0.6%) | 118 |
| Number of new infections per year: | 2,000-2,500 | New cases of AIDS confirmed per year: | About 800 |

208. Fifty-two per cent of all HIV-positive persons live in the metropolitan areas of Frankfurt-am-Main, Munich, West Berlin, Düsseldorf, Cologne and Hamburg. The same distribution by region is valid for 53 per cent of all reported cases of AIDS. Some 1,950 (2 per cent) HIV infections have been found in the new Länder (including East Berlin), as have 395 cases (2 per cent) of AIDS.

209. As previously, most new infections result from homosexual contact among men. The rate of new infections among intravenous drug users has declined slightly. The number of infections transmitted through heterosexual contacts is continuing to increase slowly. In this respect, the main means of transmission is sexual contact with persons in the so-called primary risk groups. The proportion of persons from countries where HIV is endemic and transmitted primarily between heterosexuals ("Pattern II" countries, such as those in the Caribbean, Central and West Africa) is approximately 18 per cent.

210. Thanks to improved treatment possibilities the number of newly confirmed cases of AIDS is declining in Germany. However, because of the longer survival time, the number of patients with advanced immune deficiencies will continue to rise. The proportion of patients from endemic regions ("Pattern II") is approximately 9 per cent.

211. The data are based on the optional reporting of confirmed AIDS cases and on reports of confirmed HIV antibody tests submitted under the rules of 18 December 1987 for the mandatory reporting of positive HIV confirmation tests.

212. In comparison with other countries, Germany is relatively fortunate with regard to the number of persons affected by AIDS. The spread of the epidemic has so far been such that in Germany there are approximately 220 cases of AIDS per million inhabitants, while there are about 1,338 in Spain, 887 in Switzerland, 849 in France, 758 in Italy and 274 in Great Britain. Germany ranks 13th among 21 selected European countries (situation as at 31 December 1998).

213. This success is the result of a continuous information campaign conducted for over 12 years throughout the country by the Federal Centre for Health Education on behalf of the Federal Ministry of Health. It is based on a three-pronged approach: a media campaign, an anonymous telephone advisory service and word of mouth. From the outset, efforts to avoid rejection and discrimination have been an integral part of the campaign. At the same time there is an enormous number of very wide-ranging information sources on the behaviour to adopt to protect oneself, the need for protection, protection possibilities and the reasons to protect both oneself and others. Genuine examples of how people live their everyday lives alongside seropositives encourage a sense of solidarity. These information sources are intended both for the general public and for certain target groups. Thus, for example, there are brochures in German, Turkish, English, French, Polish, Russian, Romanian, Czech and Bulgarian. The special interests of women and young people are given particular attention. Thanks to outreach activities by social workers in areas near Germany's borders where prostitution and drug addiction are rife, the target groups can be offered readily accessible preventive measures, regardless of their nationality.

214. To date, the Federal Government alone has devoted roughly DM 718 million to combating AIDS, including approximately DM 337 million for information activities, about DM 232 million for pilot programmes to advise and cover the needs of the persons concerned and some DM 109 million for research and development. DM 40 million has been made available through subsidies to help people infected by HIV-contaminated blood products. Funds for information activities also support projects for specific target groups carried out by Deutsche AIDS-Hilfe e.V. Berlin, the federation of regional AIDS patient centres, of which there are about 120. Such support currently amounts to around DM 81 million.

215. Thanks to the Federal Government's information campaign and the efforts undertaken by the Länder, communities and associations, there is a very high level of awareness of AIDS. Nearly the entire population has the basic knowledge required to protect themselves against AIDS as well as the understanding needed to live side by side with seropositives and AIDS patients. The general climate is one of a widespread desire to provide those affected with assistance and social support.

216. Representative surveys conducted annually since 1987, scientific studies and expert meetings give strong, valuable practical stimulus to efforts to improve prevention mechanisms by enabling specific approaches to be better tailored to the various target groups. As long as there is still no drug or vaccine to stop HIV, prevention will remain the most important tool in the fight against AIDS.

217. As for the request to provide more assistance without discrimination to persons affected by HIV/AIDS, the following should be noted.

218. Throughout Germany, people affected by HIV/AIDS can find specialists in questions related to HIV and AIDS infection. The largest institutions fully competent to offer advice and support are the local public health and hygiene offices and the AIDS patient centres (AIDS-Hilfen). All advisers are covered by the obligation of professional secrecy. Advice is generally given free of charge and, if so desired, anonymously.

219. Approximately 90 per cent of the German population is covered by statutory health insurance, which guarantees that in the event of illness any insured person, regardless of age or income, can be given the care he or she requires from the medical point of view. Like anyone else in poor or fragile health, workers with HIV or who are affected by AIDS are entitled by law to all social benefits. Social assistance is another element of social protection.

220. The social situation of many young people who are HIV-positive or already have AIDS is a special problem: people who contract the virus or come down with AIDS when young have very few entitlements under the social protection system. This structural shortfall is reflected in the requests for individual assistance filed with the Deutsche AIDS-Stiftung (the German foundation for assistance to AIDS patients). The Federal Government, which has allocated DM 4 million to the Deutsche AIDS-Stiftung, supports the work of this foundation and its fund-raising efforts as far as it can.

221. It must be emphasized that the campaign against AIDS, based on information, advice and the coverage of needs in a spirit of solidarity, serves as an example in the history of medicine. The arrangements that have been instituted are unparalleled by those for any other disease.

## On article 13 - The right to education

### 1. Update to the third periodic report

222. The second and fourth sentences of paragraph 348 should be deleted.

223. The statistics in paragraph 359 should be updated as follows:

Broken down by sex and by Germans/foreigners, the number of trainees was as follows in the training year 1997:

| | |
|---|---|
| Total (Germans and foreigners) | 1 622 000 |
| Male | 974 000 |
| Female | 648 000 |
| | |
| Foreign trainees (male and female) | 110 000 |
| Foreign male trainees | 68 000 |
| Foreign female trainees | 42 000 |

2. Update to the reply given to question 36 of document E/C.12/Q/GER.1

224. The text should read as follows:

- first paragraph:

The budget resources earmarked by the Federal State, the Länder and the communities for education and training amounted in 1997 to DM 172.57 billion (4.74 per cent of GDP, 14.4 per cent of the overall public budget). Of that total, universities received 4.11 per cent;

- second paragraph:

In 1996 resources made available to universities from the budgets of the Ministries of Culture and Science amounted to DM 45.8 billion.

3. Reply to paragraphs 22 and 37 of the concluding observations

225. Training leading to a qualification is an essential condition for individual fulfilment in both private and professional life. Institutions of higher education must be open to all social strata. This basic idea is incompatible with tuition fees or charges for higher education, especially when applied to a first course of study at that level. In order to guarantee equality of opportunity, most programmes of study offered by public establishments of higher education charge no fees or tuition. Besides public establishments of higher education, Germany does have non-public college-level institutions, some of which charge for tuition.

On article 15 - The right to take part in cultural life, to enjoy the benefits of scientific progress and to benefit from the protection of the interests of authors

226. The explanations concerning international copyright protection which were provided in the third periodic report (paras. 386 to 388) are complemented by the following.

227. The transposition into national law of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty of 20 December 1996 is currently in preparation.

228. Germany has continued to support harmonization efforts within the European Union, having transposed into German law the Directive of the Council of European Communities on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, and the Directive of the European Parliament and the Council of the European Union on the legal protection of databases.

229. Paragraph 391 is updated as follows:

(a) Second and third sentences: In 1994, 49.2 per cent of the public expenditure on culture was met by the municipalities, 45.7 per cent by the Länder and 5.1 per cent by the Federal State. Public expenditure on art and culture amounted to roughly DM 15.5 billion, or DM 190 per inhabitant, and 0.9 per cent of total public expenditure.

(b) The fourth sentence should be replaced by the following:

From 1984 to 1993 expenditure on culture as a proportion of total public expenditure grew, despite the fact that the deteriorating economic situation weighed heavily on public finances. Since 1994, it has declined slightly. Nonetheless, culture is still of great political importance among the duties incumbent upon the public authorities.

230. The figures in paragraph 394 concerning cultural institutions should be updated as follows to reflect the situation in 1995/1996: public theatres: 154, museums: 5,040, public libraries: about 12,700. The number of major orchestras (para. 395) in 1995/1996 was 55.

(11 November 1998)

Annex

German Federal Government

Position on the Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

1. Germany believes that, as a matter of principle, the availability of individual complaints procedures is an apt way of strengthening the legal status of those involved, as well as their awareness of their rights, and of encouraging the States parties to implement their obligations. In this context it is primarily the task of the States parties to guarantee national compliance with international law and with relevant national provisions, inter alia, through an independent judiciary. International legal protection for individuals can be an important additional element. Despite their regrettable lack of resources and the limitations this entails, the existing international procedures for individual legal protection have proven their worth as vital components of international human rights protection.

2. If a complaint mechanism relating to economic, social and cultural rights is to function efficiently, it is essential that the precise content of the regulations and obligations emanating from these rights, as well as the entitlement to complain, be clarified. In Germany's view there are still deficits or uncertainties in this area which should be cleared up (cf. inter alia Germany's earlier position in document E/CN.4/1998/84). In this connection Germany is pleased to have witnessed some developments in the right direction, in particular the appointment by the Commission on Human Rights at its fifty-fourth session of a special rapporteur whose mandate will focus on the right to education (resolution 1998/33), as well as various approaches in the United Nations Committee on Economic, Social and Cultural Rights and in the academic world (including the panel of experts organized by the United Nations High Commissioner for Human Rights on 25 March 1998 at the beginning of the fifty-fourth session of the Commission). This conceptional work must be continued.

3. Germany looks forward with interest to further discussion of these issues in the relevant United Nations forums.

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